

The Rohingya Crisis in Myanmar: Rethinking International Engagement Toward Better Humanitarian Protection

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ABSTRACT

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The Rohingyas have been described as the ‘world’s most persecuted population.’ As a Muslim minority population living in the Rakhine region of Burma, the Rohingya population continues to face political persecution and widespread discrimination at the hands of the military. In addition, the humanitarian crisis has evoked little sympathy from the Burmese population, who refers to the Rohingyas as illegal immigrants. The ethnic tensions have culminated over decades of hostility, leading to violent outbreaks in 2012, 2015, and most recently 2017. While the eruption of the Rohingya crisis has left more than 670,000 people displaced, the broader human rights community has been largely ineffective in taking actions. Their engagement strategy has been fragmented at best, leaving outside actors unable to create policies that can prevent these mass atrocities from occurring. The aim of this thesis, therefore, is to address the gap in international engagement with Burma, with the intersection of human rights and domestic politics at the foundation.

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INTRODUCTION

I. Overview of Rohingya crisis

The plight of the Rohingyas people in northern Myanmar has been described as a “textbook example of ethnic cleaning.” The numbers are astounding: 288 villages destroyed by fire, 688,000 fled to border states, and 6,700 killed in the first month of August 2017 when violence erupted.¹ As a Muslim minority in the Rakhine region of Burma, the Rohingyas faced extreme persecution and the destruction of their homes ever since. The official death toll remains unclear as the regime’s “clearance operation” continues. What’s worse, the situation of the Rohingyas has evoked little to no sympathy from others within Burma. The regime continues its violent abuses against the population, and the majority of ethnic Burmans believe that the Rohingyas are illegal immigrants and should be expelled from the country. The international human rights community, however, has been unable to induce the Burmese regime into curbing their violent abuses.

On one hand, the international community has expectations for Burma to step into the ranks of democratic governance and implement policies that fit standard human rights norms. Yet, many outside actors fail to understand that the humanitarian situation is not just a religious or ethnic crisis between the Rohingya Muslims and the Rakhine Buddhists. Rather, the crisis exists behind a backdrop of authoritarian politics, economic failure, and religious extremism. Furthermore, Burma is currently undergoing a democratic transition process that makes the political environment all the more volatile. Thus, there exists a gap between international expectations and domestic reality.

¹ Naing, ‘Myanmar Bulldozes Rohingya Villages after ‘Cleansing’ Campaign: Group’, *Reuters*; Bearak, ‘Aid Group Says at Least 6,700 Rohingya Were Killed in Burma in First Month of ‘Ethnic Cleansing’, *The Washington Post*.

II. A Moment Of Hope?

In 2003, Burma's Prime Minister Khin Nyunt announced the government's "Seven Step Roadmap to Democracy," reflecting the regime's desire for transitions toward a democratic government. This was the regime's first step toward ending its 22-year authoritarian rule. In response, the international community showed considerable optimism about the recent change, particularly that the reforms would improve the human rights situation for the Rohingya Muslims. Tomas Ojea Quintana, UN special envoy on human rights in Myanmar, expressed his hope about the moment of change: "There are real opportunities for positive and meaningful developments to improve the human rights situation and deepen the transition to democracy."² Reflecting that sentiment, the attitudes of Western governments have significantly shifted; the U.S, Europe, and other states signaled a willingness to engage in a cooperative approach toward the country. The U.S, for example, established an Embassy in Rangoon and appointed its first Ambassador to Myanmar in decades. International sanctions by the IMF and World Bank were subsequently lifted, while the EU lifted its travel ban to Myanmar. Other countries like Australia, Japan, New Zealand, and the U.K also expressed their desire to cooperate with Myanmar by ending travel restrictions and resuming economic assistance; there were even talks of debt relief. In 2012, several important figures travelled to the country as a goodwill gesture, including President Obama and Secretary of State Hillary Clinton. Overall, the shift in international reactions was due to a hope that Myanmar was now ready for change.

Yet, the democratic reforms taken have actually exacerbated tensions between ethnic minorities and contributed to the recent violence in the Rakhine State. Economic reforms

² "'Dramatic Developments', but Challenges Ahead for Myanmar." *IRIN*, 7 Nov 2011.

have only benefited the military and those at the top of the power echelons, leaving ethnic minorities feeling disenfranchised by the central government. Furthermore, the new policies failed to address long-standing hostility between ethnic groups, leading to an eruption of violence as each group feels even more threatened and hopeless in the new economic space. Politically, reforms also face similar constraints because newly created political parties often manipulate ethnic tensions. The electoral system only deepens the pre-existing conflict, pitting each group against each other for the purpose of gaining more votes and power. Lastly, cultural reforms worsened the ethnic relations as the new freedom of speech has enabled anti-Muslim propaganda to spread more freely and widely. In 2014, the UN envoy Tomas Ojea Quintana, once hopeful about the changes, admitted: “Recent developments are the latest in a long history of discrimination and persecution against the Rohingya community which could amount to crimes against humanity.”³

Thus, the international community’s hopes that democratic reforms will lead to more comprehensive social developments and human rights protection have not been realized. An alternative explanation proposes that recent political changes simply reflect the military regime’s desire to maintain its dominance, not to decrease ethnic violence in the country. Furthermore, there remains much doubt about the speed at which the regime has undertaken reforms. Nonetheless, a gap in the reactions by the international community has pointed out a serious problem in Western engagement with the country. Namely, an inability to understand the domestic and cultural processes that are ongoing in Burma has caused the human rights community to misjudge the intensity of the ethnic crisis, as well as crippled our attempts at

³ United Nations, ‘UN Expert Alarmed at Worsening Human Rights Situation in Myanmar’s Rakhine State,’ *United Nations*, 7 Apr. 2014.

curbing the violence. These questions of human rights and domestic politics serve as the foundation for this thesis.

III. Thesis Overview

The purpose of this paper is to address the shortfalls in Western response to the human rights violations in the Rakhine State.⁴ Specifically, I will argue that the international community has largely failed to understand the deeper problems in Burma, such as a traditionally dominant military regime that distrusts ethnic minorities and the anti-Muslims sentiments that have long existed. The thesis will analyze three traditionally used mechanisms for human rights enforcement:

- (1) Naming and Shaming
- (2) Economic Engagement and Coercion
- (3) Military Intervention

‘Naming and shaming’ refers to a rhetoric tool used to draw attention as well as criticisms to human rights violation. Economic engagement and coercion refer to methods such as economic aid or sanction, used to punish or reward the behavior of states. Lastly, humanitarian intervention often refers to the use of military force against a state. By analyzing the three different human rights enforcement tools used by the international community, this thesis will identify three different problems with Western response. First, the naming and shaming technique too narrowly focuses on the plight of the Rohingya, creating a *framing problem* that ignores the historical and economic complexities behind the issue. Second, the economic engagement tool runs into an *incentive problem*, where both domestic and international actors lack the incentives to actually pursue policies that promote human rights, choosing instead to protect their own economic or political interests. Finally,

⁴ Throughout this thesis, the term ‘The West’ or the ‘Western Response’ refers to Western media, IGOs, the UN, the EU, and other state governments such as the U.S.

international laws suffer from a *conceptualization problem* that does not clearly define human rights and state sovereignty, creating a lack of robust legal tools to guide humanitarian interventions.

Chapter 1 will provide a brief historical background into the domestic actors involved in the Rohingya crisis. A historical analysis reveals long-standing ethnic tensions between the Rohingya Muslims and the Rakhine Buddhists, tensions that have roots in the colonial era and were reinforced by continued violence in the region. In addition, the history of the *tatmadaw* (Burma's armed forces) also provides us with a deeper understanding of the regime's hostility toward ethnic minorities as well as its distrust of foreign influences. The perspectives of these two factors will allow us to understand the many historical and political complexities that constrain Burma's behavior.

The following three chapters will then focus on the three human rights enforcement mechanisms (naming and shaming, economic engagement, and humanitarian interventions), as well as the respective problems associated with each tactic (framing, structural, and conceptualization). Chapter 2 dives deeper into the first mechanism: naming and shaming. A literature review will show that this tactic may bring the targeted regime to curb its abuses by drawing attention to the issue, but it may also increase violence if it fails to foresee domestic factors that might worsen the crisis. In the case of Burma, the international community has failed to recognize the current economic problem that exacerbated tensions between the Rohingyas and the Rakhine Buddhists. As such, international criticisms have only contributed to ethnic tensions by creating an Us vs. Them narrative.

Chapter 3 addresses whether tools of economic engagement have been successful in pressuring the regime to improve its human rights violations. A literature review shows that

the effectiveness of this tactic depends on several domestic structural factors of the target regime. We will then provide a closer analysis of Burma's national objectives and economic policies, which reveals that the Western community has misunderstood many of Burma's socio-economic and institutional factors. Furthermore, since the success of this tactic is highly contingent on whether the international community can work together to exert precisely targeted pressures, Western response suffers from a coordination problem because states currently lack a coherent approach. Overall, this chapter essentially attempts to highlight an incentive problem in getting states to prioritize their commitment to human rights over other geopolitical or economic interests.

Chapter 4 then discusses the conceptualization problem that hinders our enforcement of human rights. Namely, laws regarding humanitarian interventions have failed to clearly delineate basic definitions of human rights, or how to justify humanitarian interventions within the constraints of state sovereignty. This incoherence is problematic in two ways. First, it leads to a deeper misunderstanding about how Burma defines conceptions of justice and rule of law, which is drastically different from the norm of Western liberal traditions. Second, it results in different regional interpretations that prevent actors from creating a coherent approach toward the crisis. Specifically, discourse between the EU and ASEAN manifests into a regional disagreement regarding norms about state sovereignty and non-interference – a problem that has prevented global cooperation on the issue. Thus, international efforts in Burma need to better address these regional differences in order to create a stronger framework for human rights protection.

Lastly, Chapter 5 seeks to offer alternative methods of engagement that address the framing, incentive, and conceptualization problems we identified. A combination of strong

legal framework, smarter sanctions, and cooperative diplomacy can be the right policy mix for a better way forward. Ultimately, this thesis hopes to provide a guideline on how the international community can best engage domestic actors in Burma toward the goal of better humanitarian protection for the Rohingyas.

CH. 1: HISTORICAL BACKGROUND

Chapter 1 will analyze the perceptions of two important actors within the conflict: the ethnic Burmans/Buddhists also residing in the Rakhine state and the Burmese military. Currently, international attention on the issue has mainly focused on the plight of the Rohingyas, who suffer from harassment, extortion, and mass displacement. However, the United States, the European Union, and other human rights activists fail to address fundamental issues about the social and political dynamics in the country. This section attempts to dissect the missing analysis to international approach by evaluating the perspectives of domestic actors within Burma.

First, a historical analysis reveals that ethnic tensions have existed between the Rohingya Muslims and Rakhine Buddhists even before the British colonial era. This animosity is further reinforced by continued violence in the state, leading each group to view the other as a threat to their existence. Second, we will analyze the attitudes and actions of the Burmese regime toward the presence of ethnic groups. By looking at the military's dominant role in the regime, we come to understand how military's distrust of ethnic minorities and fear of foreign interventions has become the driving force for Burma's political objectives. Most importantly, the military's values of national sovereignty at the expense of ethnic pluralism can explain its long-standing policies of oppression and violence.

I. Ethnic Burmans/Rakhine Buddhists

Today the term "Rohingya" is used widely to describe Muslims living in the Rakhine state of Burma. While the Rohingyas have largely lived in the region for hundreds of years, the ethnic Burmans, who also reside in the area, view the presence of Muslims as an invasion to their homeland and have long harbored an animosity toward Rohingya. From a historical

perspective, the ethnic tensions between Muslims and Burmans started even before the formation of a Burmese state, when waves of Muslims with Bengali/Indian descents settled into the region, or what is now the Rakhine state. The Rohingyas claim that they are descendants of these original settlers, which grants them citizenship status as well as other social and political rights. However, Rakhine Buddhists often argue that Rohingya Muslims are illegal immigrants from Bangladesh and refer to them by using a derogatory term 'Bengali.' These two groups have long maintained hostility toward each other, and the origin of the Rohingya's settlement in Myanmar is a major contestation point in their discourse. These contrasting narratives actually reflect long-standing animosities between the two groups that started in the pre-colonial era, and it has been reinforced during the British colonial era as well as many periods of domestic unrest. Without a deeper understanding of this historical foundation, it would be difficult to grasp the many social complexities within the Rakhine state.

Myanmar's history can be classified into three different eras: Pre-colonial (before 19th century), British Colonial era (19th century to independence in 1948), and Post-colonial era (after 1948). In the early pre-colonial era, the region saw an influx of economic migrants into the region. These settlers were mostly Muslims who came from the Chittagong area of Bangladesh and they joined the Burmese community in this part, as Burma conquered the Chittagong region in 1784. Following British colonization of Burma in 1824, ethnic Burmans who were already living in the region saw even more immigration waves from Chittagong, a period that marks early distrust between the two groups. The increasing migration flow of Muslim Indians sparked ethnic tensions as each groups try to co-exist in the Rakhine state. However, when British colonized Burma in the 19th century, this problem that was not

addressed by the ruling colonial authorities. In fact, the lack of management of ethnic relations in this period shaped the foundations of the long-lasting animosities that remain problematic today.

At the time, Britain was not concerned with the project of nation building, and as a result incorporated a patchwork of governance arrangements that left ethnic groups in social disintegration.⁵ Traditionally, the Rakhine Buddhist was at the top of social structures and held a majority of the political and economic power. However, the British administrators regarded the Burmans as “defiant” and “rebellious”, while favoring the Rohingya Muslims who they viewed as “amenable and frugal folks who paid their taxes.”⁶ As a result, ethnic Rakhines saw their powers taken away by Europeans and placed in the hands of Rohingya Muslims, who were allowed to play a dominant role. Furthermore, land disputes between Muslims and Burmans became common in the colonial period, contributing to the Buddhists’ complaints of lost economic opportunities brought by immigrants.⁷ One early example demonstrates resentment on the side of the Burmans, who wrote: “...[our] townships have been overrun by immigrants.”⁸ Meanwhile, British preferential treatment of the Muslims continued. The colonial powers began excluding ethnic Burmans from the armed forces, and in 1925, formally adopted a policy that only recruited ethnic minorities.⁹ This created a perception in the eyes of Rakhines that associated Rohingya Muslims with colonial oppression.

This tension was exacerbated when distinct ethnic groups fought on overarching sides during World War II. The Japanese invasion of Burma left a political vacuum that resulted in

⁵ Holliday, ‘Ethnicity and Democratization in Myanmar,’ 116-117.

⁶ Thawngmung, ‘Contending Approaches’, 332.

⁷ Ibid., 332.

⁸ Leider, ‘Competing identities and the hybridized history of the Rohingyas,’ 175.

⁹ Walton, ‘Ethnicity, Conflict, and History in Burma: The Myths of Panglong’, 893.

mass violence between both ethnic groups, further fueling the long-standing resentment that had existed. Beginning in 1939, a small group of ethnic Burmans started to train with Japanese forces and successfully ousted the British from Burma territory in 1942. In retaliation to the attacks, the British colonial administration armed Muslims to conduct guerrilla operations against the Japanese.¹⁰ This played out in the Rakhine state as communal violence between the Rohingyas (who supported Britain) and the Rakhines (who supported Japanese). Sources report that Rohingyas armed forces destroyed Buddhist properties and massacred thousands of Rakhines.¹¹

Similarly, another episode contributes to the historical narrative that paints Rohingya Muslims as a direct threat to the Rakhine population. In the post-colonial era after Burma had regained its independence from Britain, the Rohingya Muslims attempted to secede from the central government to create an autonomous Muslim territory, a movement that was quickly put down.¹² However, many armed groups have continued with these secessionist attempts, fueling communal violence in the region. Today, Rakhine Buddhists often refer to the existence of these groups as a direct warning of the threats Rohingya pose to the safety and survival of ethnic Burmans.¹³

Narratives with anti-Muslim sentiments like these still remain widely prevalent. On an international level, these narratives have become a call for protection of Buddhism against Islam. These perceptions are voiced by powerful Buddhist public figures in Burma, like 969

¹⁰ Thawnghmung, 'Contending Approaches', 335.

¹¹ Ibid., 336.

¹² It is important to note that there have been instances where certain political actors have manipulated ethnic tensions for their own political gain. For example, political leader U Nu entertained this idea of an autonomous zone for the Rohingyas for his own reasons, and this caused many Rakhine Buddhists to feel threatened. This is discussed more in Chapter 3.

¹³ Thawnghmung, 'The politics of indigeneity in Myanmar: competing narratives in Rakhine state', 531.

Movement and Organization for the Protection of Race and Religion (known by its Burmese acronym MaBaTha). Many Buddhists believe that Muslims have large families, therefore threatening the status of Buddhists as the majority.¹⁴ A Report commissioned by the Rakhine Government surveyed 12000 respondents and reported: "...since young, all respondents had been warned continually by grandparents, parents and teachers that the Muslims harbored evil feelings against the Rakhine."¹⁵ Admittedly, the source comes from an ethnic Rakhine that arguably is pursuing a certain political agenda, but this work shows the extent to which anti-Muslims sentiments have manifested. Moreover, Western scholars Schissler et al. conducted a "Listening Project" to survey the prevalence of the hostility toward Muslims. They found that ethnic Burmans viewed Muslims as "untrustworthy and violent," and expressed fears of a "Muslim takeover."¹⁶ Mainly, Burmans' hostility seemed to be based on antagonistic ideas about Muslim population growth, illegal immigration, and the use of violence and usurp of economic power.

In short, historical resentment between Buddhists and Muslims in the Rakhine state exceeds religious and cultural tensions. It was created and codified during the pre-colonial and British colonial eras, in which imperialist policies destroyed social structures and recast ethnic identities in polarized ways. In addition, bitter fighting during the decolonization process ensured that ethnic relations received little attention and thus remain a major problem today. The Rakhine Buddhists believe that the presence of Rohingya Muslims have stripped them of their social and political standing, and some narratives even claim that the Muslims are a threat to their existence.

¹⁴ Burke, 'New Political Space, Old Tensions: History, Identity and Violence in Rakhine State, Myanmar,' 263.

¹⁵ Rakhine Inquiry Commission, Final Report of Inquiry Commission, 18.

¹⁶ Schissler et al., 'Reconciling Contradictions: Buddhist-Muslim Violence, Narrative Making and Memory in Myanmar,' 382.

II. The Dominance of Burma's Military

Much scholarship written on Burma has focused on the militarization and repressive behavior of the regime, but little attention has been paid to its internal dynamics of political power. Before one can understand the country, one must first comprehend the attitudes and interests of the military regime. Why does the Burma military insist on maintaining its authoritarian rule in the state? What do the military officers view as their most important priority? How does the state perceive the existence of ethnic minorities or the presence of Western influence? Before we can uncover many of the political constraints that prevent the regime from fully addressing the Rohingya crisis, this section attempts to first analyze the historical roots and political objectives of the military regime. Often referred to as *tatmadaw*, the military was born out of four important periods that drastically shaped its goals and perspectives: 1948, 1958, 1962, and 1988.

The key to understanding the Burmese military is to comprehend its self-image as the savior and the protector of the country. Unlike other militaries, the *tatmadaw* views itself not only as a defender of Burma, but also as an institution on which the very survival and prosperity of Burma depends on. This role has been created since even before Burma's independence from Britain in 1948 and is continuously reinforced following decades of domestic unrest. Organized as the Burma Independence Army in 1941 with the help of the Japanese, the army was comprised of nationalists who fought against the British occupation. This history is crucial to the development of the *tatmadaw*'s self-image, as historian Robert Taylor described: "The army was a political force first and a military force second, the officer corps see themselves as freedom fighters, not professional soldiers."¹⁷ Following independence, the outbreak of multiple ethnic insurgencies begins to shape the military's

¹⁷ Taylor, 'Myanmar: military politics and the prospects for democratization', 5-6.

attitudes toward political opposition in the countries.¹⁸ As the newly created country was unprepared and ill-equipped to properly negotiate any ceasefire agreements, the civilian government became highly dependent on the military to forcefully intervene. There are two important lessons to be learned here. The first is that the circumstances that created that *tatmadaw* effectively fortified its role as the sole protector of Burma's national security. Second, the experiences of continuous social unrest shaped one of the military's most important value: only a unified state can guarantee Burma's long-term survival.

The military remained committed to the civilian government up until 1958, in which internal squabbles caused the military, under General Ne Win, to step in as a caretaker government. This change gave the military considerable autonomy, as it expanded its powers to all state-building tasks, such as other political and economic duties across Burma.¹⁹ While Ne Win eventually allowed elections to be held in 1960, these experiences, coupled with perceived success of the caretaker government, set the stage for the military coup two years later. In 1962, the army staged a coup against the elected government, citing criticisms against the ongoing ethnic negotiations that would allow certain minorities to secede from Burma. Claiming that these negotiations eventually would lead to the disintegration of the union, the *tatmadaw* consequently intervened and set out to nationalize the economic, political, and cultural life of the country. Run by a Revolutionary Council, a junta of seventeen officers with Ne Win at the apex, the *tatmadaw* began a socialist path that dominated all aspects of policies in Burma, effectively enshrining its role as the “overseer

¹⁸ See Callahan (2003).

¹⁹ Pederson, 'Promoting Human Rights in Burma', 96-97.

and final arbiter of political life, bound by duty to guide the people and regulate the behavior.”²⁰

It is this formative period of time that shaped the military’s role as the “father and mother” of the Burmese people.²¹ Acting as the political engine for Burma, the military was able to justify its legitimacy from its ability to suppress political opposition. Even from the early 1940s, Ne Win has consistently demonstrated violent reactions to domestic unrest – from arresting his political opponents to cracking down on many student demonstrations. One prime example was the 1988 protests, in which the military initiated massive use of force against its population. The event in 1988 was the most violent one yet: widespread student protests occurred due to economic failure in the state. Attempts to appease the public and institute an elected government subsequently failed, prompting the military to step in and regain control. Once again, the military decided that it could not allow the installment of a civilian government, and instead the armed forces under Ne Win launched their third coup, resulting in estimated loss of as high as 10,000 lives.²² As a result of persistent domestic unrest, generations of military officers have nurtured the belief that the military played an important role in protecting Burma against both external threats and internal threats.

Because the *tatmadaw* sees itself as the protector of the country, it has influenced many of Burma’s national objectives. First, from the early foundation of the regime, Burma’s leaders have constantly been guarding against external interference. In the words of former foreign minister Ohn Gyaw, “Having encountered the bitter experiences of over a hundred years of colonialism, we greatly cherish our independence and are determined never to be subjected again to the domination of foreigners. We will never let outsiders dictate our

²⁰ Ibid., 97.

²¹ Ibid., 97.

²² Steinberg, ‘Burma/Myanmar: What Everyone Needs to Know’, 77-79.

destiny and shape our future.”²³ Such nationalistic rhetoric may seem extreme, but Burma’s historical experiences have shaped its antagonistic view toward all forms of Western influence. Due to the country’s colonial experiences during British rule and Japanese occupation, fear of foreign aggression is a driving force in many of Burma’s foreign policies. The government constantly pursues a policy of neutralism to avoid being dragged into unnecessary wars. In 1962, this policy turned into one of isolationism, and the country closed its borders from the outside world. To make matters worse, following independence, many ethnic rebellions occurred with the support of foreign states, exacerbating the suspicion among military leaders. Reportedly, some forty ethnic insurgencies sprung up with the help of the British, East Pakistan, Indians, Thai, and the Chinese.²⁴ This deep sense of insecurity also extends to subtler forms of influence beyond national security, such as the regime’s incessant obsession to guard against Western cultural influences. In the 1960s, the Revolutionary Council took steps to protect the country against Western cultural influences, discontinue foreign aid programs and ban the teaching of English.²⁵ While current policies have become more open toward Western culture as a result of reforms, the regime still exhibits wariness toward of all forms of external interference.

In addition, the regime views the presence of ethnic rebellions as the main source of its instability. This sentiment resulted from the British colonial era, in which certain ethnic groups remained loyal to the British and became embroiled in battles against the Burma Independence Army. Military officers, who have seen friends die and spent many years on the battlefield against insurgents, are filled with a sense of distrust (and almost hatred)

²³ Ohn Gyaw, ‘Statement Concerning Developments in Myanmar.’

²⁴ Steinberg, ‘Burma/Myanmar: What Everyone Needs to Know,’ 43-44.

²⁵ Pederson, ‘Promoting Human Rights in Burma,’ 85.

toward ethnic nationalists.²⁶ As mentioned in the previous section, this tension also takes its roots in British preferential treatment toward ethnic groups that harbored feelings of resentment from ethnic Burmans.²⁷ Thus, the military leaders who felt disenfranchised by social discrimination and economic exploitation during British rule came to associate the presence of ethnic minorities as a threat to Burma's future survival. Consequently, the *tatmadaw* whose legitimacy is derived from its ability to quell social unrest, views the presence of ethnic minorities with paramount concern.

Lastly, one question we must address is how does the military manage to maintain its unified authority? This will help us understand how the regime has yielded such oppressive policies with an ironclad authority. The answer is twofold. First, under Ne Win's leadership, many political officers were devoted to his personalist authority; they looked to him as the founder and rightful successor of the armed forces. These officers trained together in 1940s against the British, fortifying their bonds and devotion to Ne Win.²⁸ As such, the military in the early periods remained mostly unified under his command. In later periods, however, the *tatmadaw* leaders became more disconnected from newer corps of officers. This leads into a second explanation, in which the armed forces begins decentralizing command and extending its control to local level of governments. This in turn creates new rent-seeking opportunities that ensured continued loyalty from the military officers. For example, the *tatmadaw* places its officers in administrative positions at many local districts, township, or villages that allows for considerable autonomy. This serves dual purposes. Primarily, military officers often manage many key positions in economic enterprises that allow them to profit from

²⁶ Ibid., 101.

²⁷ McCarthy, 'Legitimacy under Military Rule: Burma', 549-550.

²⁸ Taylor, 'Myanmar: military politics', 6.

financial extortion or corruption.²⁹ In a time of economic insecurity and inflation, this tactic ensures the continuation of the solidity and reliability of the officer corp. Furthermore, since the tatmadaw's authority now extends to the Burma's administrative duties, it is understood that the military officers in these key positions are not to be questioned. Any failure to follow directions is perceived as disobedience. This top-down corruption results in a rigid and hierarchal ruling structure that prevents local citizens, political parties, ethnic organizations, and civil societies from having a voice.

This section has provided a deeper analysis of Burma's internal perceptions and priorities. The four critical periods of 1948, 1958, 1962, and 1988 have all led the military regime to believe in their role as leaders of Burma's political affairs rather than as servants to civilian politicians. The structure of the military has also served to solidify the absolute power of the armed forces as well as ensure the continued loyalty of its officers. Influenced by the British colonial era and periods of domestic unrest, the military has developed a role for itself as the country's guardian, with the task of preserving Burma's long-term survival its most important priority. As a result, the regime views the presence of ethnic disunity and Western influences as the source of the country's instability, and its leadership remains steeped in rigid notions of nationalism that strongly influences its policy decisions.

III. Conclusion

In short, this section has uncovered the missing analysis of Burma's complex domestic narrative. We discussed the historical tensions between two minority groups within the Rakhine state: Rakhine Buddhists and Rohingya Muslims. This tension has its roots during Burma's colonial era and is constantly reinforced due to recent violence and reforms

²⁹ Pederson, 'Promoting Human Rights in Burma', 109; Steinberg, 'Myanmar: The Dynamics of an Evolving Polity', 53.

in the region. Furthermore, the Rohingya crisis is worsened by a military that largely values national unity at the expense of ethnic minorities. We discover that as a result of the military's historical dominance in shaping Burma's national objectives, the regime has at best ignored issues of ethnic contentions. At worst, the military views the presence of ethnic groups as a source of the country's instability, contributing to the long history of oppressive violence against the Rohingyas. An understanding of these different perspectives will help our analysis in the next three chapters, which argues that the international community has failed to incorporate these complexities in its human rights response.

CH. 2: REFRAMING THE ISSUE

Bringing international attention to human rights violations has traditionally been useful in rallying support for the oppressed and forcing the perpetrators to stop their behaviors. In 2007, the United Nations Human Rights Council adopted a resolution calling for Myanmar to stop the beating and killing of peaceful student demonstrators during the Saffron Revolution. In 2009, Amnesty International released an article condemning the violent crackdown on political protestors by Sudanese security forces. In 2012, Human Rights Watch published a report detailing the sexual violence and degrading treatment of Congolese migrants at the hands of the Angolan government. These are just a few examples of commonplace efforts for NGOs and intergovernmental organizations to “name and shame” the perpetrators of human rights abuses. Yet, not all efforts are followed by better government protection for the oppressed. Is naming and shaming just cheap talk?

Chapter 2 attempts to analyze the effectiveness of the naming and shaming technique to improve human rights protection for the Rohingyas in Burma. This section will first provide a literature review that outlines the benefits and drawbacks of this tactic. By discussing past practices, this section concludes that naming and shaming ultimately can produce domestic backlash that exacerbates ethnic violence, especially in certain regime types. In the case of the military-led Burma, naming and shaming efforts have overlooked the countrywide economic crisis that has affected ethnic Burmans as well as other minority groups. Thus, current news media have contributed to the polarized narrative between the Rohingya Muslims and the Burmese Buddhists by focusing too narrowly on the political aspect of the crisis, without paying much attention to the bigger historical and economic picture. This section attempts to highlight this issue by drawing closer attention to domestic

issues within the country, and ultimately argue that international efforts must be sensitive to many of Burma's ethnic complexities.

I. Literature Review

What is naming and shaming?

This tactic simply describes any attempts by non-state actors to publicize violations of human rights (naming) and bring pressure to violators to change their behaviors (shaming). Most often, these non-state actors are composed of a network of domestic and international nongovernmental organizations (NGOs). Kathryn Sikkink, a political scientist on human rights norms, coined the term “issue network” to describe specific networks made up of these NGOs, linked by shared principals and information exchanges.³⁰ Particularly, the ability of NGOs to influence foreign governments is the most powerful aspect of these issue networks. For example, Sikkink discussed the human rights violations at the hands of Argentina's military regime and the NGOs efforts' to curb these abuses by calling global attention to the issue. Immediately following the criticisms, the regime denied any claims or reports and tried to discredit many NGOs by mobilizing its citizens against these accusations. However, as the issue continued to remain a problem for its international image, the regime realized that it must comply with international standards and finally made concrete improvements to abandon its repressive practices. Sikkink argued that this transition was made possible by the work of these issue networks of NGOs, which served as “carriers of human rights ideas, inserting them into the policy debate at the crucial moments.”³¹ Persistent efforts at naming and shaming the perpetrators, she argued, was effective in initiating actions and pressuring powerful actors to make a change.

³⁰ Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America', 411.

³¹ Ibid., 437.

How can naming and shaming be effective?

As Sikkink mentioned above, drawing criticisms to the human rights abuses can alleviate the problem by pressuring the perpetrators to make a change. However, naming and shaming is also effective by forcing other domestic and global actors to initiate actions. For example, Matthew Krain provided a study that examined whether shaming and naming has proved effective in reducing the severity of genocides and politicides. Krain agreed with Sikkink that this mechanism forces state to take progressive actions in order to maintain its international legitimacy and domestic support.³² He also added that at a minimum, this mechanism proved useful in taking away excuses by policymakers who claimed that they were not aware of the severity of killings.³³ Most important, his work adds to existing literature by providing additional actors that can be influenced by this naming and shaming tactic. It can inspire local actors, such as executioners who makes mass violence possible, to change their calculus and deter them from carrying out further killings.³⁴ In closed autocracies, it can cause societal elites to withdraw support for the regime leaders or inspire bystanders to step in.³⁵ Due to the broad nature of human rights, ranging from economic freedom to press freedom to political freedom, this study was especially illuminating because it focused specifically on one specific set of human rights violation: genocide. Other studies that focus on all types of violations can create results that are not specific and informative, and Krain's work was included here specifically because of its narrow framework. By following his arguments, this section has showed that naming and shaming can be viewed as a tool to not only invoke actions from powerful actors like governments, but also to activate

³² See Hawkins (2002); Straus and Valentino (2007).

³³ Krain, 'J'accuse! Does Naming and Shaming Perpetrators Reduce the Severity of Genocides or Politicides?', 585-586.

³⁴ See DeMeritt (2010).

³⁵ See Wright and Escriba-Folch (2009); Staub (1996).

local actors and moderates to create the domestic pushback needed and force the perpetrators to curb ongoing abuses.

What are the drawbacks?

Some literature has proposed, however, that the global publicity tactics may carry negative consequences and lead to *more* violence. For example, Emily Hafner-Burton argues naming and shaming makes violence more likely if regime leaders perceive that to be a threat to their power, causing them to step up their violent abuses. She conducted a statistical study and found that governments often use more terror after being placed in the spotlight.³⁶ Several reasons could explain this phenomenon. One is that due to the decentralized nature of some countries, there can be local police forces or prison guards who operate without strong control from the regime. There may also be terrorist groups that take advantage of the spotlight and uses terror to advance their own objectives. Additionally, the global criticisms may cause the government to react harshly against their own citizens in an attempt to secure their powers, cracking down on minority groups to prevent further mobilizations. Finally, the regime could simply be taking seemingly democratic actions to appease the international community, when in fact it is quietly stepping up its abuses in other ways. For example, a regime may institute an election in response to outside pressures, but it can simultaneously torture and beat political opponents who challenge their authority.³⁷ Hafner-Burton's work contributes to this analysis by highlighting the potential unintended consequences of this tactic. If not carried out strategically, it could worsen the human right situation in some

³⁶ Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem', 700.

³⁷ See Zimbabwe President Mugabe's abuses by Barry Bearak: "Jailed in Zimbabwe: A Reporter's Ordeal and a Country's Upheaval," New York Times. 27 Apr. 2008.

cases.³⁸ Overall, the current empirical studies available have demonstrated mixed reactions to the naming and shaming technique. While it can prove effective in bringing global and domestic actors to initiate a change, it can also cause the perpetrators to step up their abuses in certain scenarios. What accounts for these different factors? The answer is equally complicated.

What accounts for these differences?

The debate regarding this global criticism tactic becomes murky when we consider several domestic factors within target countries that can mediate its effectiveness. These factors can be regime types (autocracies or democracies), foreign aid dependence, and the presence or absence of civil societies. For instance, James Franklin discovered that countries with less dependence on foreign aid are less likely to be affected by international shaming. Analyzing the effectiveness of human rights criticisms in Latin America countries from 1981 to 1995, he found that countries that are most dependent on foreign capitals are 33 percent less likely to commit humanitarian crimes than those less dependent.³⁹ With greater ties to the outside world, the target country has more to lose and tends to be more sensitive regarding its human rights reputation. In another study, Hendrix and Wong looked at whether certain regime types are more susceptible to global criticisms. They argued that since autocratic regimes tend to restrict press freedom, any reporting of abuses should have a larger effect because NGOs have “greater potential to alter public perceptions of behaviors.”⁴⁰ Thus, their findings demonstrated that naming and shaming is most effective only for autocratic

³⁸ See Constable and Valenzuela (1991); Hawkins (2002); Munoz (1986); Martin and Sikkink (1993).

³⁹ Franklin, ‘Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America’, 198-204.

⁴⁰ For a counterargument, see Wright and Escriba-Folch (2009).

regimes, but not for hybrid and democratic ones.⁴¹ Although the results are quite mixed, the literature above reminds us that when the international community is considering which tactic to employ, it must remember that successes are contingent on a host of domestic factors.⁴²

What does the literature tell us about Burma?

The literature review has provided a brief overview of the benefits and disadvantages of this technique. Yet, there has been a lack of study that analyzes how this tactic has been applied to Burma, especially to the Rohingya situation. While this ethnic crisis has been evolving for decades, the recent explosion of violence has left the international community shocked and unprepared. Currently, while the United Nations has made efforts to bring global attention to the issue by accusing the military of ethnic cleansing, international backlash has sparked domestic protests within Burma by Buddhist nationalists. These demonstrators have long harbored animosities toward the Rohingya Muslims, and they have criticized the global community for pressuring the army over its treatment of the Rohingya. There were reports of demonstrators who marched to Yangon, the capital, in support of the country's military following international criticisms.⁴³ In addition, hundreds of Buddhists have tried to block an aid shipment by the International Red Cross from reaching the Rakhine state, the area where a majority of Rohingya resides.⁴⁴ This negative reaction within Burma demonstrates that the international community has much to reassess when it comes to our policies for global criticisms. What are the gaps in our knowledge about Burma's domestic

⁴¹ Hendrix and Wong, 'When Is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses', 671.

⁴² For example, Bell et al. (2012); Murdie and Davis (2012).

⁴³ Asian Correspondent, 'Burma: Thousands rally in support of military amid growing global criticism.' 30 Oct. 2017.

⁴⁴ Birsell, 'Rohingya crisis: Hundreds of Buddhists gather to block aid shipment reaching Burmas fleeing Muslims,' *The Independent*. 21 Sept. 2017.

structure? What are ways we can better improve our approach to human rights protection? How can we ensure that naming and shaming just isn't cheap talk? The remainder of this chapter is dedicated to providing an understanding about Burma's domestic economic crisis that drives its reaction, which will help us to bridge the gap about international shortcomings in regards to this urgent issue.

II. Analyzing Burma's Current Economic Crisis

Before we can analyze how international criticisms have played out in the country, we must first address how Burma's economic crisis has contributed to the recent violence in ways that Western media has failed to understand. Currently, the Rakhine state is plagued with structural poverty issues that still remains unsolved, turning ethnic violence into a fight for political, social, and cultural rights. As mentioned in Chapter 1, ethnic Rakhines and Rohingya Muslims have long held an animosity toward each other. Their efforts at co-existing in the Rakhine State have not been easy, and Burma's economic downfall has done little to alleviate the problem. In fact, entrenched poverty in the region actually exacerbated ethnic tensions further by making both of these groups the target of state oppression and civic exclusion. Ethnic Rakhine leaders frequently complain of economic marginalization, human rights abuses, lack of political representation, as well as lack of access to health and education. As a result, the recent violence is a manifestation of a more complex battle between the two for greater political representation and economic freedom in the region.

According to statistics from 2015, the Rakhine state is actually among the poorest states in Myanmar, with a poverty rate of 78 percent, compared to the national average of 38 percent.⁴⁵ The economy in the poverty-stricken and conflict-ridden Rakhine state is marked

⁴⁵ World Bank. Myanmar: *Ending poverty and boosting shared prosperity in a time of transition*.

with stagnation and underdevelopment. The ongoing ethnic violence creates an atmosphere of instability that further hinders economic progress. As a result of racial discrimination, Buddhist nationalists often pressure Rakhine employers to not hire Rohingya Muslims, therefore increasing the unemployment rate in the area.⁴⁶ Inter-communal violence has also led to a decrease foreign investment into the region, disrupted trade, and reduced the growth of small businesses.⁴⁷ Yet the Burmese government has not been helpful in promoting economic growth. Instead, widespread corruption and rent-seeking behaviors on the part of officials further exacerbate the problem. For example, the restriction of movement that's placed on Muslims creates incentives for government officials to take bribes in exchange for granting them travel permits or business licenses.⁴⁸ This problem extends to all ethnic groups in the region who have to deal with costly licenses and inefficient bureaucracies. As a result, widespread discrimination and rent-seeking behaviors have made the Rakhine state one of the poorest parts of the country.

In addition, the security apparatus in the region is equally unpromising. The increasing presence of Burma's armed forces in has actually exposed more civilians to threats of sexual violence, forced labor, and extortion. As a result of ethnic instability, the government has been moving many of its battalions to these areas, but many of these troops are underfunded and are insensitive to the needs of the local population.⁴⁹ Consequently, several reports cited increasing human rights threats at the hands of militarization. For example, the military does not have the sufficient funds to provide food rations or adequate

Systematic Country Diagnostic, Report No. 93050-MM. July 2014.

⁴⁶ Ibid., 20.

⁴⁷ Advisory Commission on the Rakhine State, Annam Report, 20.

⁴⁸ Ibid., 21.

⁴⁹ Pederson, 'Promoting Human Rights in Burma', 204.

salaries, causing soldiers to extort money and steal land from villagers for the army's use.⁵⁰ These actions then contribute to the flow of displaced people and forced migration in critical areas. Often times, the absence of rule of law has allowed soldiers to get away with human rights abuses such as extrajudicial killings, rape, and widespread destruction of properties.⁵¹ Meanwhile, civilians in the area continue to suffer from these inequalities without any political power to fight back.

A recent report on the current challenges in the Rakhine state has further detailed the lack of grievances mechanisms for people to voice their concerns. Under the current political system, only the military and the central government are responsible for the core functions in the region, such as managing natural resources, economic policies, and jobs in civil service or security agencies.⁵² Local officials lack key powers to influence policy-making and often do not receive an explanation for many policies. This leaves them unable to answer questions from the people and contributes to deep-rooted sentiments of exclusion by all ethnic groups. Within the area, Muslims are the most underrepresented due to current laws that barred them from voting in the 2015 elections or serve in civil service posts. However, other ethnic and religious groups, like the Chin, Daing-Net, Mro, Mramagyi, Khamwee, Thet, and Hindus, are also marginalized and underrepresented in the political sector.⁵³ Consequently, this lack of political representation is far-reaching and exacerbates many problems related to infrastructure and social services.

Today, the Rakhine state continues to suffer from a lack of health or education services. As a border state, it has critical needs that are neglected by the central government.

⁵⁰ See Amnesty International (2002); Oo and Min (2007).

⁵¹ Fink, ' Militarization in Burma's ethnic states: causes and consequences,' 450-451.

⁵² Advisory Commission, Annam Report, 46.

⁵³ Ibid., 47.

Currently, there are only five health workers per 10,000 people, while the adult illiteracy rate is 50 percent higher than the national average.⁵⁴ Meanwhile, drug trafficking and other illicit economic activities continue to plague the region, decreasing the security and safety of its population. Communal violence as well as government ineffectiveness has prevented long-term development efforts to succeed. As a result, continued poverty continues to fuel ethnic tensions between all people within the Rakhine State, pitting each group against each other as they fight for whatever benefits, sympathy, or protection they can find. Both the Rohingya Muslims and Rakhine Buddhists are embroiled in a conflict that has its historical roots as an ethnic and religious clash, but now has evolved into a battle for political and social rights in a poverty-stricken state.

Opposing Narratives of Origin

In addition to problems related to poverty, the fight between the Rohingyas and Rakhines is more than just about cultural differences or resources competition. Rather, it has manifested as a legitimacy dispute about whether the Rohingyas are a recognized ethnic group in Myanmar. For the Rohingyas, being recognized would grant them citizenship status as well as a host of other political and cultural rights. For an oppressed group struggling to gain recognition from the government, the Rohingyas view this battle as crucial to their long-term survival. Yet, ethnic Rakhines remain adamantly opposed to this, citing fears of losing their majority status in the Rakhine state, especially within the context of the economic and political oppression endured by both groups. Consequently, they have taken a strict argument that the Rohingyas are illegal immigrants from Bangladesh and therefore not entitled to any protection within the Rakhine state.

⁵⁴ Advisory Commission, Annam Report, 40-41.

In order to better understand the complexities behind this fight, we must first understand the country's complex citizenship laws. Unlike a majority of countries, Burma's citizenship laws lack clear definitions on who can qualify for citizenship, especially for people who were not considered "indigenous" to the region. According to the current citizenship laws, only ethnic minorities who settled in Burma before the British annexation in 1823 can qualify for citizenship rights. The ethnic Burmans are considered indigenous and therefore citizens, because they are offspring of a group who have settled in Burma before the British annexation in 1823. On the other hand, while the Rohingyas historically were economic migrants from Bangladesh as mentioned in Chapter 1, the exact history of their migration remains unclear because there were multiple waves of migration before and after 1823. Thus, the question of the Rohingyas' origin has been a major contestation point between the Rohingya Muslims and Rakhine Buddhists, who argue that the Rohingya should *not* be considered citizens. As a result, both sides have use the concept of indigeneity to establish their arguments against each other as each group struggle to claim their existence as more legitimate, and therefore more deserving of the government's protection.

Central to these opposing narratives of origins is the discourse on the Rohingyas' citizenship status, and this section will briefly analyze two competing texts that highlight this discourse. First, the Muslim population's National Democratic Party for Development (NDPD) submitted an opposing report in 2012 entitled "*In Respect of the Fact that the Muslim Inhabitants of Rakhine State are Natives by Race and Citizens of the Republic of the Union of Myanmar Under Law or By Natural Birth,*" which argued that the Rohingyas have long established a presence in Myanmar. On the other hand, The Rakhine Nationalities Development Parties (RNDP) published a report a month later entitled '*Criticizing the*

*historical fabrication of Bengali who assume themselves as Rohingya and pretend themselves to be taing-yin- thar*⁵⁵ to support this argument. Ardeth Maung Thawngmung, an expert on topics in Burma, has published an analytical work that contrasts these competing texts.

First, the NDPD account focuses mostly on the pre-colonial era, arguing that Muslim influences were present long before 1823. They cite evidence such as the presence of ancient Indian culture and literature, as well as Islamic influences in the Arakan Kingdom.⁵⁵ In addition, the report mentions the brief period during the civilian government in 1948 that held considerably favorable policies toward the Rohingyas, such as allowing them to serve in high-ranking positions, broadcast programs in their own language, and establish the Rohingyas Student Association. Lastly, the NDPD account also emphasizes the human rights abuses suffered by the Muslims and appeals to the international community for help. Thawngmung points out here, though, that their publication fails to mention events such as waves of large Bengali immigration following British annexation, a period that the RNDP focuses 30 pages on.⁵⁶

In contrast, the RNDP account denies the long-established presence of Muslims in the region, citing sources such as archeologists, researchers, and historians like Jacques Leider.⁵⁷ Furthermore, they seek to disqualify Rohingyas' indigenous claims by maintaining that there is no historical record of the term "Rohingya" in the pre-colonial and colonial era. Instead, the Rakhine leaders argue that Rohingyas are direct descendants of economic immigrants during the British annexation after 1823, which disqualifies them from citizenship rights. Finally, the RNDP report establishes that the ethnic Rakhines are the victims of these immigrants, who has to endured the robbing of their ancestral homeland as well as the

⁵⁵ Thawngmung, 'The politics of indigeneity', 535-536.

⁵⁶ Ibid., 536.

⁵⁷ Ibid., 537.

violence of Muslim extremism.⁵⁸ Citing fears about a Muslim takeover of their region, the RNDP argues that the Rohingyas should be returned to their original country of Bangladesh.

In short, these contrasting narratives demonstrate the difficulties of tracing an accurate historical origin of the Muslim community through the pre-colonial era. In addition, both the Rohingyas and ethnic Burmans maintain that they are the victims of this conflict while attempting to discredit the other. The contentious debate of the Rohingyas' settlement remains an important one today, one that needs a closer attention by international actors when discussing the issue. The next section will attempt to analyze how human rights activists have tried to address these internal problems of economic and legal complexities that have exacerbated ethnic tensions today.

III. The Framing Problem

Since the 1990s, countless human rights reports have brought international attention to the Rohingya issue. However, these reports generally focus on the appalling living conditions experienced by refugees and internally displaced people, while largely avoiding any discussion of the Rohingyas' identity and historical background. For example, the latest report from the Human Rights Group started with the sentence, "While the current crisis is rooted in long-standing discrimination and denial of human rights..."⁵⁹ The UN has also dubbed the Rohingyas as the "world's most persecuted minority."⁶⁰ Narratives like these – framed sharply in terms of Muslim victimhood or Rakhine racisms – have created huge domestic backlash within Burma. As Jacques Leider, a historian and Burma expert, criticized: "These stripped-down chronologies of many such reports have henceforth become

⁵⁸ Ibid., 537-538.

⁵⁹ International Crisis Group, 'Myanmar's Rohingya Crisis Enters a Dangerous New Phase', 1.

⁶⁰ *The Economist*, 'The Most Persecuted People on Earth?'. 13 Jun. 2015.

placeholders for a shrunken or absent historical accounts.”⁶¹ Understandably, these mainstream accounts was intended to highlight the injustices and discrimination the Rohingyas suffered. Yet, current naming and shaming efforts lack deeper sensitivity to a context of the economic, historical, and political constraints within the Rakhine state. In particular, our analysis will address how Western news media has contributed to a polarized Us vs. Them narrative in two ways: (1) by misunderstanding the history of the term *Rohingya*; and (2) by failing to acknowledge the frustration of the voiceless ethnic Rakhines.

The history of the term ‘Rohingya’

The ethnic Rakhines have argued that the term *Rohingya* itself is a highly politicized term that has been created by Rakhine Muslims only to promote their own ethnic recognition. Considered as the most persecuted minority in the world, it is true that the Rakhine Muslims have long struggled in getting ethnic recognition from the Burmese government. Western media as well as Rohingya activists have coined the term *Rohingya* as an affirmation of their identity and as recognition of their struggles. However, this term has not always been used. According to Leider, this term did not appear in any British administrative records, and the current spelling of *Rohingya* has only appeared in recent literature since 1963.⁶² While there have been records of different spellings like “Roewhengyas, Ruhangyas, or Rwangya,” there is no clear definition or official understanding on its meaning—namely due to the discourse on the Rohingya’s origin as well as a lack of credible primary source on the subject. Thus, the absence of a historical record of this term “Rohingya” has made the word highly contested between the Rohingyas and ethnic Rakhines, since it cannot be used adequately to

⁶¹ Leider, ‘History and Victimhood: Engaging with Rohingya Issues,’ 108.

⁶² Pisharoty, ‘The Frictions in the Rakhine State Are Less About Islamophobia Than Rohingya-Phobia’. *The Wire*. 30 Sept. 2017.

capture the migration history of Muslims into the region. As such, the usage of this word can become problematic in many ways.

On one hand, the term “Rohingya” creates problems for existing Muslim communities in Rakhine because it ignores the fact that some Muslim groups simply do not identify as Rohingyas; they would prefer to be called Rakhine Muslims instead. According to Derek Tonkin, former British Ambassador, the majority of Muslims in Myanmar do not claim to be Rohingyas and now feel under threat after communal tensions have exploded.⁶³ As our literature review has shown, naming and shaming can only work if it succeeds in initiating local actors to act on the behalf of the Rohingyas. However, Western usage of the term “Rohingya” has actually alienated Muslims within the country as well as other Burmese, preventing them from speaking up on this issue.

On the other hand, the word “Rohingya” creates even more confusion as the term is becoming synonymous with a political movement rather than as an ethnic identity. One only has to look at the spike in the numbers of people who claim to be Rohingyas to understand the extent of this situation. In 2009, the UN estimated that there are 729,000 Rohingyas living in Myanmar.⁶⁴ In 2012, however, that number drastically increased to 2 million people.⁶⁵ Considering the exodus in recent years, the spike in number demonstrates the alarming phenomenon that the term Rohingya has created. No longer does the word describe a name or an identity; it instead represents an entire campaign by the Rakhine Muslims for greater political autonomy. Consequently, because the term has emerged as a *Rohingya movement*, it no longer accurately denotes an ethnic group of Muslims who are actually descendants of economic migrants in the pre-colonial era.

⁶³ Tonkin, ‘Rohingya: Breaking the Deadlock.’ *The Diplomat*. 16 Oct. 2015.

⁶⁴ Leider, ‘The Muslims in Rakhine and the political project of the Rohingyas’, 19.

⁶⁵ Ibid. 19.

As a result, ethnic Rakhines contend that the term Rohingya has no historical record in literature and is therefore only created by a few Rakhine Muslims in order to engender a false sense of victimhood. It is important to understand the highly politicized nature of this term. Because the word Rohingya automatically carries notions about human rights violations as well as outright discrimination and abuses, to not use the term “Rohingya” in Western media is tantamount to denying them legal representation and basic rights. However, the term in Myanmar carries salient emotions of frustration and disenfranchisement on the part of the Rakhine Buddhists for several reasons. First, Burmese people in Rakhine believe that the promotion and usage of this term by Western media is disrespectful because it validates the existence of the Rohingyas as an ethnic group in Rakhine, which is a historical debate that is still unresolved and is the root causes of current tensions. The existing discourse on the origins of the Rohingya by the RNDP and NDPD represents strong feelings on both sides toward this issue. By using the term “Rohingya,” the West is seen as explicitly dismissing the arguments of the ethnic Rakhines.

Second, the danger of using this term is that it alienates the Rakhine Buddhists – who not only vehemently contest the recognition of Muslims, but also feel ostracized by the international community and framed as the perpetrators of these human rights violations. More specifically, Western narratives tend to portray Rakhine Buddhists as henchmen of the military without giving full consideration to the long-standing economic, political, and historical constraints behind this ethnic tension. What is dangerous about these narratives is the promotion of a sense of victimhood suffered by the Rohingyas. Sissel Rosland, in her study of victimhood, identity, and agency, has found that victimhood can drive the process of exclusion by concealing the dynamics of the relationship and devoiding it of any historical

explanation.⁶⁶ In the case of Burma, this rhetoric further exacerbates ethnic tensions by encasing this issue in black and white division between the Muslims and ethnic Rakhines, thereby eliminating any chance for communication and cooperation. Western media, by framing the Rohingya issue in a victimhood rhetoric, has placed the blame solely on the Rakhine Buddhists. As an ethnic Rakhine who also suffers from entrenched poverty in the region, to see these descriptions of themselves would certainly bring negative emotions toward the Rohingya people. As a result, the ethnic Rakhines continue to feel left out by both the Burmese government and the international community, fueling sentiments of resentment that in turn worsen the current crisis.

The Voiceless Rakhines

First, the human rights community has done little to publicly acknowledge the sense of frustration among the ethnic Rakhines, who feel excluded by both the central Burmese government and international community. In order to understand these feelings, we must comprehend that ethnic Rakhines are traditionally Buddhists who have long suffered a perception that they are not in charge of their own destiny. Starting with 1785 conquest of the Rakhine state by Burmese forces, the ethnic Rakhines view this invasion as a lost of their Arakan Kingdom, a traditionally cherished land in Buddhist teaching.⁶⁷ Since they closely identify with their Buddhist roots and identity, they perceived this experience – the lost of their homeland and culture – as a historical injustice. In addition, the persecution they face during this time at the hands of the Burmese national government contributes to their grievances of oppression.⁶⁸ Following waves of massive Muslim migration into the existing Buddhist community, they frequently complain about unfair treatments during British

⁶⁶ See Rosland (2009).

⁶⁷ Leider, 'The Muslims in Rakhine and the political project of the Rohingyas'. 28.

⁶⁸ Thawnghmung, 'Contending Approaches', 333.

colonization and the social and economic burdens brought by the Rohingyas.⁶⁹ Lastly, the Rakhines also currently suffer from a host of social issues, such as political oppression, economic coercion, as well as a lack of health, education, or aid access. These factors, past and present, culminate into emotions of xenophobia, nationalism, and an unwillingness toward any compromise.

As a result, ethnic Burmans in the region often complain about feeling excluded by the Burmese government. This hostility has already led to the uprising of several Rakhine armed resistance groups, with the aim of gaining greater autonomy within the Rakhine state. Currently, the strongest group is the Arakan Army, which has reportedly killed dozens of military personnel as a result of communal violence.⁷⁰ These armed groups are not only engaging in religious or cultural fights with the Muslims, but they are also attacking government officials as an expression of frustration toward a lack of any political rights. The existence of these militant groups reminds us that the Rohingya crisis embodies more than just ethnic and religious clashes between two ethnic groups; rather, it reflects a battle for greater political legitimacy and social rights in a conflict-ridden nation.

In addition, an international spotlight that focuses solely on the Rohingyas further fuel feelings of exclusion and resentment by Rakhine Burmans, who demand both recognition and rights in their home state. For instance, Buddhists have protested by blocking an international aid shipment to the Rohingyas – an act that clearly demonstrates their feelings of resentment toward being excluded.⁷¹ These feelings stemmed from hostility against Western narratives that focus on “the plight of the Rohingya,” narratives that use

⁶⁹ Leider, ‘History and Victimhood: Engaging with Rohingya Issues’, 110.

⁷⁰ Advisory Commission, Annam Report, 19.

⁷¹ Birsell, ‘Rohingya crisis: Hundreds of Buddhists gather to block aid shipment reaching Burmas fleeing Muslims.’ *The Independent*. 21 Sept. 2017.

rhetoric such as “harrowing”, “unending”, and “worsening”, narratives that in turn have exacerbated communal tensions in the fight for international sympathy. Furthermore, recent allegations of “genocide” or “ethnic cleansing” have done little to foster dialogue between the ethnic Rakhines and the Rohingya Muslims. Jacques Leider has asserted that the language used here has only blurred other underlying causes behind this issue.⁷² By focusing too narrowly on the brutality of these unfolding events, Western media have done little to acknowledge other historical and economic factors that contributed to the crisis. Once again, it is not the aim of this thesis to determine the extent of human rights abuses occurring in the state, and it is crucial to acknowledge the intentions of the international community to bring the abuses to light. However, we must also recognize the narrow framing issue that has only served to drive the process of exclusion between two groups.

Consequently, there has been a rise in anti-Muslims rhetoric within Burma. Angry and frustrated at the Burmese government and international human rights activists, many Buddhists have started propaganda movements that aim to emphasize the sense of victimhood among the Rakhine people. For instance, Burmese Buddhists admitted to being fearful of Islamic extremism after hearing about violent news within the Rakhine state: “It happened after seeing that news and the Rakhine problem... I am worried that ISIS’s actions will affect the world or will affect our country.”⁷³ They express fears of losing their majority status, of retaliation by the Muslim worldwide, and of being a victim within their own country. What is important here is a similar use of the victimhood rhetoric, encased in an Us vs. Them narrative that leaves little room for negotiation or compromise. Both sides are

⁷² Lynn and Hlaing, ‘Interview with Rakhine History Expert on the recent communal conflict in Rakhine State’. *Facebook*. 28 Aug 2012.

⁷³ Schissler et al, ‘Reconciling Contradictions’, 385.

locked in a competing battle for victimhood, and the Rohingyas are clearly winning in the eyes of the international community.

As a result, not only have these sentiments have quickly escalated into full-blown violence, it actually reflects a trending phenomenon that has framed the Rohingya issue in purely religious terms. As Leider points out, there is a recent shift in news media that diverges away from efforts that try to untangle intricate historical factors of ethnic tensions. Instead, Western media shifted toward a narrow message about the victimhood of the Rohingyas – solely on the basis of their Muslim identity. No longer is the story about the Rohingyas versus the Rakhines, but instead about Muslims vs. Buddhists. This shift in framing toward the *Muslim-ness* of the Rohingya issue actually has engendered several problems on its own.

First, it creates a narrative of Islamophobia that only strengthens the Buddhists nationalist movements. In particular, the 969 Movement and the MaBaTha Movement have been known to use social media and other propaganda tools to spread chauvinistic speeches against the Muslim population; they have also been suspected of being responsible for several violent riots and attacks on the Muslim population across towns in Myanmar.⁷⁴ These actions are driven and reinforced by the sense of exclusion and victimhood of the Buddhist people as Western media continues to only provide support for the Rohingyas. Secondly, the focus on the Muslim-ness of the Rohingya identity continues to draw backlash from Muslim population within Burma, who also suffered from discrimination and violence by the 969 and MaBaTha. Non-Rohingya Muslims living in Burma perceive the use of the term “Rohingya”

⁷⁴ van Klinken and Aung, ‘The Contentious Politics of Anti-Muslim Scapegoating in Myanmar,’ 12-14.

purely for political purposes as “toxic”, and would prefer to be disassociated from this term.⁷⁵ As such, Western actors fail to comprehend that there is a lack of solidarity toward the Rohingya people from the Muslim communities in Burma, even from those who suffer from the communal violence. Finally, the usage of this purely religious narrative by Western media further feeds negative portrayals of Muslim extremism that does little to improve the livelihood of the Rohingya people. Increasing fears about potential extremists activities would only serve to validate the Burmese government’s argument that the Rohingyas are dangerous and should be treated so. Furthermore, this extreme narrative would also deter other human rights actors from sympathizing with the plight of the Rohingyas, given the current militant situation in Middle East.

In short, Western narratives that focus solely on the victimhood of the Rohingyas or the Muslim-ness of their identity are problematic for the ongoing humanitarian crisis. By misunderstanding the history of the highly politicized term *Rohingya* as well as a lack of attention toward the struggles of the ethnic Rakhines, the international community has actually contributed to a polarized Us vs. Them narrative. Thus, framing this issue too narrowly in the victimhood rhetoric has only exacerbated ethnic tensions by alienating the domestic population within Burma. In reality, the situation is not so much *Islamophobia* as it is *Rohingyaphobia*; instead, the West should remember that both sides are in a competing narrative for *victimhood*. As Leider states, “Like in many other places, here we see people looking basically for justice, progress and the affirmation of their identity.”⁷⁶

IV. Conclusion

⁷⁵ Pisharoty, ‘The Frictions in the Rakhine State Are Less About Islamophobia Than Rohingya-Phobia.’ *The Wire*. 30 Sept. 2017.

⁷⁶ Lynn and Hlaing, ‘Interview with Rakhine History Expert on the recent communal conflict in Rakhine State’. *Facebook*. 28 Aug. 2012.

Currently, the Rakhine region suffers from systemic poverty, making the Muslims and Buddhist both minorities within their own state. Poor state governance and systematic oppression actually contributes to the ethnic violence because both the Rohingyas and the ethnic Burmans feel that they are the disenfranchised by the government. Consequently, the Rohingya crisis manifested as something more than a longstanding resentment and religious clash. It reflects a fight for social, cultural, and political rights, as each group struggle to claim their own narratives as indigenous to the Rakhine state. However, current spotlight on the issue has mainly taken an extremely hostile and negative tone toward the Burmese people for allowing these atrocities to occur. Narratives like these that focus solely on the plight of the Rohingyas have produced backlash by Rakhine Buddhists and the Burmese government, who argue that the international community has not given due attention to the historical and economic complexities behind it. Thus, this section attempted to analyze these polarizing arguments to determine whether international criticisms have too narrowly framed this issue. We found that the international community has to improve on its rhetoric that frames the issue solely in a passive victimhood notion. This only serves to encase the issue in a black and white division that dampens cooperative talk between the two groups. It is important to acknowledge that the sufferings and injustice experienced by the Rakhine Muslims are valid and should not be understated in any way. However, only when the international community acknowledges the implications of their actions can there be constructive dialogue on both sides to bring back ethnic harmony.

CH. 3: RESTRUCTURING THE ECONOMIC INCENTIVE PROBLEM

Offering economic aid or threatening sanctions has been a classic tool for the international community. Western liberal governments like the U.S. or the U.K. often impose sanctions on countries that are committing human rights abuses, or reward a country in the process of democratization with some foreign investment as a gesture of approval. The relationship between economic tools and the level of human rights violations has been extensively studied in empirical analysis: it is theorized that economic aid or coercion *can*, to a certain extent, affect the level of abuse in the recipient or target country. South Korea's Sunshine Policy was based on this premise: if we shower North Korea with goodwill in the forms foreign assistance or economic investment, then our "sunshine" will ease North Korea into adopting behaviors that comply with international human rights standards. However, Burma has experienced both sides of this power game: they've suffered under sanctions and flourished under periods of economic aid. Yet in both times, ethnic tensions and human rights abuses have not gotten better. Thus, this chapter attempts to uncover the merits and demerits of economic tools of engagement and coercion in the context of Burma.

First, a literature review shows that the success of engagement or coercion is highly dependent upon three factors: the regime type of the target country, its economic structure, and whether the international community can exert a coordinated effort. Using these criteria will allow our thesis to precisely analyze the effects of these tools in regards to Myanmar. Secondly, section II will discuss the country's political and economic institutions to analyze how the international community has misunderstood these internal, complex structures. Eventually, I will argue that the current economic approach has not been able to incentivize societal elites within Burma. Because Burma has defined its objectives in terms of national

unity and economic growth, they are willing to achieve these goals *at the expense* of ethnic pluralism. As a result, approaches that are not aimed at restructuring these incentives will only serve to exacerbate ethnic tensions. Then, section III will explore the incentive problems at the international level, namely the failure of state actors to balance between geopolitical interests and its commitment to human rights. Particularly, I will explore the reactions and perspectives of each interested party like China, India, U.S, and the U.K to discuss how their domestic politics has created a coordination problem. Ultimately, this chapter hopes to highlight the incentive problem that has hindered our economic engagement and sanctions efforts in respect to the Rohingya crisis.

I. Literature Review

What is economic engagement and coercion?

More broadly speaking, the concept of engagement and coercion aims to affect the behaviors of a state by using economic tools. Engagement can mean foreign aid or economic loans, while coercion usually takes the form of economic sanctions. Often, engagement tools can be used by states or intergovernmental organizations (IGOs), such as the UN or the World Bank. Its logic follows the theory of a bargaining game, where one side tries to change the cost-benefit calculus of the targeted state by either rewarding or punishing it for its behavior. Originally, this tactic has been theorized to have broad transformative effects: socializing the target's political leadership, strengthening political coalitions that are more moderate, and ultimately inducing domestic political changes from within the target state.⁷⁷ However, while these tools can certainly be effective in getting a country to improve its human rights record, it can have many negative implications. In particular, our literature

⁷⁷ Haggard and Noland, 'Hard Target: Sanctions, Inducements, and the Case of North Korea', 5-6.

review outlines three cases in which economic tools can bring unintended effects, depending on:

1. Regime types
2. Economic structure of the target country
3. Level of coordination between sending countries

Regime Types

First, the target's regime type is an important determinant of sanction success. Because authoritarian regimes have the powers to repress and impose cost on their populations, sanction efforts may only prove detrimental to human rights efforts.⁷⁸ For instance, sanctions could be harmful if the regime perceives the action as a threat to their regime survival, creating patterns of oppressive behaviors. Similarly, regime leaders can manipulate economic tools for legitimacy purposes. For instance, Fidel Castro depicted U.S. economic coercion as an impingement on Cuba's national sovereignty, making it easier to justify his repressive regime.⁷⁹ Thus, effective sanctions must require the international community to first accurately gauge the coercive capacity of the target state. Otherwise, regime leaders can easily exploit sanctions for the purpose of legitimation by rallying citizens against outside interference. These authoritarian states constitute "hard targets", signaling a need for different, innovative approaches.⁸⁰

The Economic Capacity of the Target Country

Tools of economic engagement also may not lead to better human rights protection if the economic benefits are only captured by state-controlled or military-controlled enterprises. If only those at the top echelon in the state receive the benefits of economic growth, these tactics will do little to induce any domestic political changes. For example, experts on North

⁷⁸ See Wood (2008); Escriba-Folch and Wright (2010); Major (2012).

⁷⁹ See Schreiber (1973).

⁸⁰ See Haggard and Noland (2017).

Korea have long criticized South Korea's Sunshine Policy, arguing that the increased foreign aid only further reinforces the repressive regime, since the political leaders were typically the main beneficiaries of economic growth.⁸¹ Similarly, in a study researching the link between changes in U.S. foreign aid and the effects on a country's human rights violations, a scholar found that changes in aid resulted in no discernable impact on human rights practices.⁸² These findings imply that while engagement can be a useful tool in human rights enforcement, it certainly has to be tailored to ensure that the entire population can capture the benefits.

Similarly, the mechanism of sanctions also operates under these constraints, where corrupt elites and regime leaders can exploit rent-seeking opportunities and offset the effects of sanctions onto core constituents.⁸³ Dursen Peksen's study sampled 95 countries and found that the human rights situation actually tends to worsen following economic sanctions.⁸⁴ If elites can escape the economic cost of sanctions by simply diverting limited resources to their favor, the average citizen will be disproportionately affected. In addition, the result of this inequality will further transform into greater poverty and higher levels of unemployment, making sanction efforts obsolete. Thus, the economic structure of the target country is a crucial factor in determining the success of this method.

Coordination Between Sending Countries

Finally, there is a coordination problem that seriously weakens international efforts to curb abuses. This problem can be attributed to the difficulties of balancing between a state's geopolitical interests and its values on universal notions of human rights. For instance, a

⁸¹ Haggard and Noland, 'Hard Targets', 7-11.

⁸² Regan, 'U.S. Economic Aid', 621-626.

⁸³ See Kaempfer et al. (2004); Niblock (2001); Andreas (2005), Gibbons (1999).

⁸⁴ Peksen, 'Better or Worse? The Effect of Economic Sanctions on Human Rights', 63-69.

country could choose to protect its economic interests in a state that's committing repressive acts, at the expense of universal values on humanitarian protections. Literature reveals that often times, economic aid can worsen humanitarian crisis in these cases where human rights concerns are overshadowed by other objectives. One example is U.S. economic engagement with Latin America countries during the 1970s and 1980s, in which the U.S. often give aid to countries with low human rights record for the purpose of economic gains or for national security interests.⁸⁵ Since United States' foreign aid policy has always been composed of conflicting goals such U.S. national security interests, economic development, or democracy development, we tend to overlook a country's human rights records. As a result, the receiving country has manipulated our foreign assistance for its own political purposes. For example, the training and equipment the U.S. provide to Latin American countries for defense purposes are used by repressive governments, while economic assistance programs that support the status quo only further reinforces policies of suppression.⁸⁶

In addition, globalization has allowed target countries to easily evade the cost of sanctions by simply looking at different trading partners that place the least restrictions on trade. In the case of North Korea, the regime was able to survive sanctions by looking to China for most of its trading. Meanwhile, China has other concerns to worry about if the DPRK were to collapse – such as security and economic instability – so as to justify looking the other way when it comes to sanctioning efforts that promote human rights in the country. Thus, unless the international community can work together, our efforts will remain hindered

⁸⁵ Regan, 'U.S. Economic Aid', 615-617.

⁸⁶ Ibid. 618.

by this coordination problem. Stephen Haggard, an expert on North Korea, wrote: “We need to continually ask whether sanctions failed to work or whether they were not tried.”⁸⁷

What does the literature tell us about Burma?

The literature review has pointed out two important conclusions regarding the enforcement abilities of the human rights community in Burma. First, economic engagement and coercion efforts must tailor policies to better fit Burma’s political and economic institutions. Since Burma has a long history as a military-run authoritarian regime, its political structure has allowed many mechanisms for regime leaders to maintain legitimacy in the eyes of its citizen. The elites, therefore, have little incentives to solve ethnic issues because it does not need the support of the minority populations. Following the political opening of the country in recent years, scholars have warned against the possibility that elite coalitions will contribute to contentious politics by using anti-Muslim rhetoric in order to strengthen their own political power.⁸⁸ Any sanctioning efforts, therefore, must be careful to understand how the regime manipulates ethnic relations for the purpose of boosting its own legitimacy. In addition, the economic reforms taken since 2008 has only benefited those in the military, while the majority of ethnic minorities have yet to reap its benefits. Burma’s economic structure has allowed for these inequalities to exist, further breeding ethnic resentment without re-incentivizing the regime leaders to change their behaviors. Consequently, any future engagement efforts must then focus on changing economic and political incentives for societal elites to promote real change for the Rohingyas population.

Second, current efforts have been futile as a result of the cooperation problem. Michael Green, a U.S. policy expert on the Asian region, has argued that the international

⁸⁷ Haggard and Noland, ‘Hard Regime’, 8.

⁸⁸ See van Klinken and Aung (2017); Burke (2016).

community must step up and develop a coordinated initiative to promote a stable and secure Burma.⁸⁹ In the past, neither sanctions nor engagement has proved effective because the international community lacked a consensus on the best approach. Within the U.S, Congress and State Department remains polarized, both refusing to acknowledge that strategies of sanction and engagement have failed. Meanwhile, the UN's attempt to impose sanctions was vetoed by China and India. Both these countries have proved to be the greatest obstacles in efforts to create reforms, since each has more incentives in taking advantage of Burma's natural resources and trade opportunities. While Green recognizes the various perspectives and interests of each nation, he argues that the current approach, in which each country pursues an individual policy that prioritizes their own geopolitical interests, has actually worsened the situation. To promote real change in Burma, ASEAN, U.S., China, and India must work together to coordinate a response that prioritizes a shared vision for democracy in Burma. This analysis once again points out an incentive problem in getting international actors to balance between their interests and human rights norms. The rest of this chapter, therefore, will explore these issues both within Burma and among international state actors.

II. Incentivizing Burma's Political and Economic Elites

The Political Structure

The structuring of Burma's political institutions has placed the military at the top of the power echelon. As discussed in chapter 1, the military not only believes in its role as the country's protector, but it also harbors long-standing hostility toward both foreign powers and ethnic insurgencies. As a result, the regime's political elites have shaped their vision for Burma's future along lines of nationalism and xenophobia. These sentiments can be seen in

⁸⁹ Green and Mitchell, "Asia's Forgotten Crisis: A New Approach to Burma," 156.

an official document published by the military regime in 1988 that outlines three objectives for the armed forces:⁹⁰

1. Nondisintegration of the union
2. Nondisintegration of national solidarity
3. Consolidation of sovereignty

These three objectives have been the guiding principles since Burma's independence in 1948 and were continuously reinforced during periods of political unrest. In other words, these principles are the incentives for the political elites: their most important values are *national sovereignty, territorial integrity, and national unity*. Without a closer understanding of how deeply these values are ingrained in the political elites' perspectives, any sanctioning efforts would fail to induce the regime toward change.

First, the military regime defines national sovereignty as more than just a defense against foreign invasions. Rather, it reflects an obsession with total control in all aspects of Burmese life, from political to economic, social, and cultural spheres.⁹¹ Then, the regime's second goal of territory integrity can be understood in terms of its constant struggle against domestic insurgencies. Namely, the regime views the presence of ethnic rebellions as the main source of its instability.⁹² Lastly, the regime's focus on national unity is its most important priority. With 135 recognized ethnic groups, the country's leaders are constantly wary of its multiethnic society, citing possible threats of ethnic rebellions that will destabilize the regime. The government's policy for achieving national unity, however, is one of forced assimilation. Opposed to ideas about multiculturalism and diversity, the regime has consistently attempted to consolidate the national identity around a single Burma identity: a common language (Burmese), a common religion (Buddhism), and a common culture

⁹⁰ SLORC Order No.13/92.

⁹¹ Pederson, 'Promoting Human Rights in Burma,' 84.

⁹² McCarthy, 'Legitimacy under Military Rule: Burma,' 549-550.

(Burma). According to a military official, collective action must be of “one blood, one voice, one command.”⁹³ With the goals of creating a monolithic state, the regime attempts to assimilate many of its minority population through coercion mechanisms like low-level civil wars, education campaigns, and even the marginalization of certain groups.⁹⁴ The common element in these initiatives reflects an institutional preference toward *ethnic absolutism*, not multiculturalism. The elites have consistently demonstrated a willingness to suppress any signs of ethnic differences so that it can achieve its most important political objective: a unified Burma state free from foreign influence and domestic instability. In the words of Former Foreign Minister Win Aung, “Our program of democracy is secondary. Our fundamental program is national unity. Given the fact that we have so many races living together, if we are not united, there will be no chance of survival.”⁹⁵

In essence, the regime views the presence of ethnic disunity and Western influences as the source of potential instability, and its leadership remains steeped in rigid notions of nationalism that strongly influences its policy decisions. The international community, on the other hand, has yet to grasp the extent to which values about national sovereignty have shaped Burma’s actions. Specifically, proponents of sanctions believe that sanctions work by delegitimizing the regime’s policies, forcing it to take actions to initiate democratic reforms; an example, they contend, was the regime’s decision to hold multiparty elections in response to U.S. sanctions.⁹⁶ Yet, sanctions may not be as effective as some believe. While the imposition of sanctions did significantly reduce the regime’s income, the political elites were

⁹³ Pederson, ‘Promoting Human Rights in Burma’, 89.

⁹⁴ Holliday, ‘Ethnicity and Democratization in Myanmar,’ 121-122.

⁹⁵ Interview with Foreign Minister Win Aung, *Time* magazine, 15 Nov. 1999.

⁹⁶ Thawngmung and Sarno, ‘Myanmar Impasses: Alternatives to Isolation and Engagement?’, 46.

able to circumvent the sanctions by selling their natural resources to China and India.⁹⁷ Furthermore, sanctions were not successful in rallying the general public, who are now struggling to survive as their situation worsens. As one ethnic minority leader recalls, “When the people became poorer and poorer, they became more apolitical...because they were only focused on their survival.”⁹⁸ Hopes that sanctions would spur revolts have yet to materialize.

At the same time, the regime leaders managed to maintain their legitimacy and political power despite sanctions, and some scholars attribute this to the regimes’ rigid and uncompromising tactics.⁹⁹ Focused on national sovereignty and generally hostile to what they view as foreign interference, the political elites managed to remain financially solvent without succumbing to the pressures of sanctions; instead, their actions to liberalize the country in 2008 was the result of General Khin Nuyt’s decision to improve the country’s international image. An important figure inside the ruling party, Khin Nuyt saw that the only way for the regime to maintain power was by improving its relations with outside countries.¹⁰⁰ It is important to note that this decision was not taken because the regime feared Western sanctions or was genuine in creating a democratic government, but only stemmed from its desires to maintain its grip on power.

As a result, the liberalizing steps taken – under the careful guidance of the regime – have done little to promote ethnic unity. Instead, the reforms that were thought to protect ethnic minorities only further marginalized them and worsened their livelihoods. The government’s promise of ceasefires serves as an example of how the regime has prioritized national solidarity at the expense of ethnic unity. Under the guise of a top-down

⁹⁷ Hlaing, ‘Understanding Recent Political Changes in Myanmar’, 202.

⁹⁸ Jones, ‘Explaining Myanmar’s regime transition: the periphery is central,’ 782.

⁹⁹ Thawnghmung, ‘Myanmar Impasses: Alternatives to Isolation and Engagement?’, 46.

¹⁰⁰ Hlaing, ‘Understanding Recent Political Changes in Myanmar’, 201.

“transformation” process, the regime signed ceasefires with various ethnic groups that was boasted as the end to civil wars in the country. The international community heralded this step as the result of successful sanctions and has subsequently started to increase economic engagement with Burma. However, the reforms have only taken away the economic and political power of ethnic groups while solidifying the strength of the military. For instance, increased foreign investment has benefited the regime by stabilizing its economy as well as doubling the size of armed forces.¹⁰¹ The rebel groups in border areas felt the effects of this change when the military penetrated the borderlands at a sharp rate, establishing garrisons in insurgencies’ territories and capturing rebels’ resources.¹⁰² This not only gave the regime new capabilities, but it also boosted the leveraging powers of the regime by diminishing the resistance capacity of the opposition. The regime is now able to tax rebels, forcibly relocate their supporters, and splinter the base of these insurgency groups.¹⁰³ Minority leaders, many of whom are now struggling due to the worsening economic conditions, are forced to sign ceasefire agreements that gave away their land rights to the central state. Thus, the political elites have been able to negotiate these ceasefires on their own terms while ignoring the need to promote ethnic unity. Sanctions and engagement efforts have yet to induce the elites to change their behavior; instead, they remain fixed on the goals of national sovereignty at all cost.

Finally, many of those in the international community have hoped that democratic reforms will lead to an opening of political space for minority voices. However, the institutional structure of Burma’s political environment has only worsened the situation for those in the Rakhine State. In particular, candidates and parties have the incentives to

¹⁰¹ Jones, ‘Explaining Myanmar’s regime transition: the periphery is central,’ 791-793.

¹⁰² Ibid.

¹⁰³ Ibid.

manipulate ethnic tensions for the purpose of political gains. For instance, the Arakan National Party (ANP) has a support base comprised of mainly ethnic Rakhines and has no Muslim supporters. Its leaders, in order to maintain support with the Rakhine ethnic group, has stressed the threats that Rohingyas poses and advocated for limiting electoral rights of these people.¹⁰⁴ They adopted strong anti-Muslim rhetoric to raise a fear of domination by the Rohingyas in order to win electoral support from Rakhine Buddhists in the region. Similarly, this manipulation of ethnic tensions was also adopted by the military-run party, USDP. Seeing the need to increase their support based, the regime partnered with Buddhist extremists (also called *Sangha*) who are known for their strong anti-Muslim rhetoric.¹⁰⁵ The brokerage of this partnership is influential, and reflected in a statement by a military official: “In building a nation, to gain peace and development, the Sangha’s support matters.”¹⁰⁶ Their shared commitment to nationalism has resulted in an increased hostility and uncompromising attitude toward the presence of Rohingya Muslims. More importantly, this meant that the central government was now unwilling to protect the Rohingyas during communal violence. The government’s reluctance to act has added to a sense that perpetrators of violence in the Rakhine State will not be prosecuted, effectively allowing room for increased ethnic violence.¹⁰⁷ Thus, while the international community has hoped that reforms will ultimately enable the Rohingyas to participate in the democratic process, the examples of ANP and the USDP have demonstrated that increased foreign aid or increased political space has yet to

¹⁰⁴ Burke, ‘New Political Space, Old Tensions: History, Identity and Violence in Rakhine State, Myanmar,’ 268.

¹⁰⁵ van Klinken and Aung, ‘The Contentious Politics of Anti-Muslim Scapegoating in Myanmar’, 366-368.

¹⁰⁶ Ibid. 366.

¹⁰⁷ Ibid. 360-362.

result in ethnic unity. Instead, political elites still have other incentives such as promoting nationalism, gaining electoral power, and maintaining national sovereignty.

Tying back to our literature review, the analysis above has provided support to the hypothesis that a country's regime type is an important factor. Therefore, the international community needs to pay closer attention to the incentive problem that has hindered the effects of international engagement. Burma's authoritarian structure has not only allowed the country to evade sanction costs, but it has also enabled certain elites to manipulate political reforms to their advantage. In addition, the widespread corruption of the military has effectively ensured that the local population remains marginalized. In the process, ethnic relations have worsened even though the country has received a significant amount of financial assistance and foreign investment.

The Economic Structure

Given the widespread poverty that is currently plaguing the country, regime leaders remain constantly worried about popular uprisings against the poor living conditions. This threat of social unrests drives the regime's most important strategic objective of economic growth. Not only is economic development crucial to creating a socially integrated nation, but it is also the source of legitimacy for the political leaders. In fact, the SPDC has acknowledged that what the people of Burma want is not political aspirations, but economic improvements: "The majority of people in Burma are not obsessed with politics. They do not see freedom in terms of the right to vote or express themselves freely. The demands for such rights will only come when...the more fundamental needs of the people have been fulfilled."¹⁰⁸ Consequently, the regime has pursued economic reforms only for the purpose of maintaining political power and pacifying the population. Since their incentive for economic

¹⁰⁸ Pederson, 'Promoting Human Rights in Burma', 90.

growth is of a political nature, reform policies are not aimed at promoting broad-based growth. The international community, on the other hand, has not grasped the domestic driving force of Burma's policy. As a result, the increased economic engagement has only worsened ethnic situation, as the regime continues to benefit from foreign assistance while the minority population remains neglected.

"Ceasefire capitalism" serves an example of how Burma's elites have exploited the economic structure to their own benefits. This term refers to the ceasefire agreements signed between the military and the ethnic groups, in which the minority groups gave away their land rights for the state to create new larger-scale economic development projects.¹⁰⁹ The regime leaders have promoted this step as a significant path toward increased foreign investment into the border region, which would result in economic gain for both the central government and the ethnic minorities living in the area. However, the Burmese military had other intentions than merely to create profits, and that was to control the ethnic population while diminishing the powers of minority leaders.¹¹⁰ This was done by various economic measures that ensured the benefits of foreign investments would be captured solely by the central government. For instance, the military took control of many resource-rich areas such as mining and logging and then forcing the ceasefire groups to pay a loyalty tax to the state for access.¹¹¹ They also took advantage of the land concessions during the agreements, creating taxes for which farmers must now pay or risk their land being confiscated. These processes of resource concessions have provided the regime with a new source of revenue

¹⁰⁹ Woods, 'Ceasefire capitalism: military-private partnerships, resource concessions and military-state building in the Burma-China borderlands', 751.

¹¹⁰ Ibid. 753.

¹¹¹ Jones, 'Explaining Myanmar's regime transition: the periphery is central,' 793.

while allowing them additional leverage power against insurgency groups.¹¹² In addition, it has created new political partnerships between the military elites and the local businessmen to extract natural resources from the state, thus weakening the political position of ethnic minority leaders against the regime.

As a result, this re-routing of economic benefits has important implications for the population. First, most of the Foreign Direct Investment (FDI) flowed into this country has not resulted in increased employment and contributes to unequal development for certain sectors.¹¹³ Specifically, the power and extractive industries have become “enclave sectors”, where they receive 98.1 per cent of the total values of investment.¹¹⁴ Consequently, the reforms have created an economic disparity that fueled ethnic tensions in many border areas. While the Rakhine state has issued statements calling for increased revenues from resource sales and increased representation in the resource management process, the central government remains unresponsive when it comes to resource sharing.¹¹⁵ Meanwhile, the situation in the Rakhine state has only gotten worse. Economic changes led to increased labor costs that make it harder for farmers in the production of harvest and transportation, while the fishing industry continues to suffer from management of resources.¹¹⁶ The population has yet to see the effects of economic growth, and the locals show little confidence that their problems will be addressed. Growth from new industry projects are not captured by the local government, and businessmen fear that they will remain marginalized. All these tensions

¹¹² Woods, ‘Ceasefire capitalism’, 754.

¹¹³ See Bissinger (2012).

¹¹⁴ See Dale and Kyle (2015).

¹¹⁵ Lynn and Oye, ‘Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing’, 38.

¹¹⁶ Burke, ‘New Political Space, Old Tensions’, 267.

have only been exacerbated since the economic reforms, causing frustrations among politicians and ethnic groups alike.

In summary, economic grievances and political corruption have only led to an increase in anti-Muslim rhetoric. Fears of a Muslim takeover and hostility toward the Rohingyas have been exploited by nationalists and militarized groups, leading to an explosion of violence. Meanwhile, the central government remains unresponsive to the ongoing crisis. As our analysis has demonstrated, the political and economic elites have other incentives of maintaining their political power and capturing the benefits of economic growth. Our literature review showed that a country's regime type and its economic capacity is important in determining the success of our engagement efforts. Yet, Burma's political structure as an authoritarian regime as well as its economic capacity have allowed for the regime elites to prioritize their own objectives over the protection of the Rohingya Muslims. They remain committed to national sovereignty, territorial integrity, and national unity. Thus, the international community needs to better understand the incentives of Burma's societal elites in order to better shape its response to the human rights violations.

III. Incentivizing International State Actors

According to the literature review, another important aspect to the success of economic sanctions is the ability of states to coordinate their efforts. Due to the globalized nature of our world order, target countries can easily evade the costs of sanctions by turning to other nations for trade. In the case of Burma, neither sanctions nor engagement proved effective because the international community lacked a consensus on the best approach, allowing the country to remain financially solvent. This section will provide a discussion on how various countries have responded to the ongoing crisis. Specifically, our analysis will

demonstrate that each country has different incentives that strongly influence their policy toward Burma. Thus, solving this coordination problem requires an assessment of how we can prioritize a commitment to human rights values over other geopolitical or economic interests.

United States

The United States has utilized severe sanctions toward Burma in the past. There is a broad consensus within the policy-making circle of Washington that reflects an overall hardline position toward the military-led government, calling out the regime leaders for their widespread human rights violations as well as the imprisonment of Aung San Suu Kyi, a Nobel Peace Prize winner and humanitarian activist beloved by the West. Congress has been the leading voice in the hardliner's camp, arguing that any international activities in Burma would serve to legitimize the regime and undermine the position of the pro-democracy forces.¹¹⁷ Accordingly, U.S. has enacted a wide variety of sanction measures that effectively severed U.S. ties to the country, and has consistently been pressuring allies to follow its lead.¹¹⁸ In the years following democratic reforms in Burma, however, the Obama Administration took steps to open relations with the country, establishing an Ambassador to Rangoon as well as lifting restrictions on humanitarian assistance and the investment ban. Yet, these steps of reconciliation may have underlying motives. Robert Taylor has pointed out that the opening to Myanmar was about American domestic politics – a move by the Obama Administration to claim a foreign policy success in Asia in the midst of an election.¹¹⁹

¹¹⁷ Pederson, 'Promoting Human Rights in Burma', 25.

¹¹⁸ For a more detailed list of U.S. sanctions and the effects in Burma, see Thawngmung (2006).

¹¹⁹ Robert Taylor, 'Myanmar: From Army Rule To Constitutional Rule?', 223.

What these examples have shown is that U.S. approach toward Burma has oscillated between a hardline approach and an engagement strategy that may reflect American domestic politics, as opposed to a clear understanding of the political complexities within Burma. In other words, our policies have been influenced at times by hardline ideological preferences or broader geopolitical interests in the Asia-Pacific region. This strategic incoherence can be problematic in many ways. First, while the United States' commitment to human rights values should be applauded, it is important to note that such a position decreases chances of a collaborative approach, as discussed by several scholars. Pederson pointed out that U.S. policy toward Burma has been one of the strongest sanctions regimes against any country in the world, noting that the United States has always pursued a proactive engagement toward China, Indonesia, and Vietnam.¹²⁰ Similarly, Thawnghmung argued that such an approach lacks the necessary pragmatism and flexibility to respond to any positive changes or explore options of constructive engagement.¹²¹ Furthermore, in response to the ongoing crisis at the moment, the Trump Administration has once again placed sanctions on Burma, and then Secretary of State Rex Tillerson has used the rhetoric of "ethnic cleansing" and "Rohingya" many times. Thus, the hardening of U.S. position overtime may only serve to isolate the pro-democratic forces within Burma.

China

While the West has taken an overall strict approach toward Burma, China has long been credited as Burma's most important donor, supplying the government with both military and economic assistance. This behavior can be attributed to its economic and political interests in the regime's survival, as well as its policy on noninterference. In particular, China

¹²⁰ Pederson, *Promoting Human Rights in Burma*, 24.

¹²¹ Thawnghmung, *'Myanmar Impasses'*, 56.

has great interests in seeing the regime's prosperity because it has invested billions of dollars in trade, investment, and weapon sales to the *tatmadaw*.¹²² It also enjoys military benefits like access to ports and to monitoring activities in the Indian Ocean.¹²³ Lastly, China has geopolitical interests in the region because of its existing preferential access to oil and gas reserves in Myanmar. As a result, the PRC has been a consistent source of support for the regime's continued dominance and has often times protected the regime's abusive behaviors.

However, the relationship is not as perfect as it might seem. Currently, the Burmese leaders have demonstrated a willingness to reduce China's influence in the country, preferring instead to maintain its independence; for instance, it has terminated a massive economic project in the Kachin State funded by China.¹²⁴ In addition, ongoing ethnic clashes around the border have created drug trafficking and health issues to Chinese people, leading the PRC to rethink its strategy toward Burma as these new security issues worsen. Michael Green has expressed hope that China will redefine its interests when it comes to protecting Burma, once it realizes that the humanitarian situation is seriously undermining China's attempt to become a responsible international actor.¹²⁵ The task now is for the international community to engage China toward prioritizing human rights values in its diplomatic efforts, as opposed to other economic or geopolitical interests.

India

Similar to China, India has significant economic interests in the region. As part of its "Act East" Policy, India is keen on developing many investment projects and road networks in Burma to further expand its influence; it is currently working on a huge infrastructure

¹²² Green and Mitchell, 'Asia's Forgotten Crisis,' 152-154.

¹²³ Ibid.

¹²⁴ Robert Taylor, 'Myanmar: From Army Rule To Constitutional Rule?', 234.

¹²⁵ Green and Mitchell, 'Asia's Forgotten Crisis,' 154.

project to provide a sea-river-land link to one of its port.¹²⁶ Furthermore, the competition between China and India also plays a role in the conflict, incentivizing India to step up its bilateral engagement with Burma to counter the threat of China's expansion.¹²⁷ Thus, the driving forces of India's strategic engagement are economic opportunities as well as a desire to counterbalance China's growing presence in the region. However, persistent political turmoil around India's border has heightened its security concerns.¹²⁸ In particular, ongoing ethnic rebellions have not only caused a drug-trafficking problem, but it has also raised concerns of counterinsurgency by Indian officials; many have expressed a frustration toward a lack of successful achievements in controlling these anti-Indian insurgency groups.¹²⁹ Furthermore, India and Burma have trade dispute issues that could lead India to change its calculus toward the regime and realign its support for the human rights community.¹³⁰ Once again, while India has demonstrated that its interests currently lie in other concerns beyond purely humanitarian interests, there is much that can be done to reshape India's shortsighted policy.

United Kingdom and other European countries

Historically, European countries have adopted a harsh approach consistent with Western standards, pursuing strong measures that target the military regime and its support base. These countries have been ardent supporters of human rights, but their approach is more balanced than the hardline position taken by the U.S. Instead, their policy has generally separated human rights concerns from economic concerns, and many European countries refuse to impose unilateral sanctions on Burma. Reflecting that sentiment, a British trade

¹²⁶ Bhaumik, 'Why Do China, India Back Myanmar over the Rohingya Crisis?'

¹²⁷ See Egretreau (2008).

¹²⁸ Thawnghmung, 'Myanmar Impasses', 59.

¹²⁹ Egretreau, 'India's Ambitions in Burma: More Frustration than Success', 947.

¹³⁰ Ibid., 948-951.

mission to Burma explained their support for continued investment and trade: “We are strongly critical of the abuses of human rights...but that should not impede or prevent trade [which] can have a useful effect in opening up and showing the need for change in the country.”¹³¹ Similarly, Germany and France remained some of the main importers of Burmese goods up until 2004, and the UK and France were among the country’s leading investors in 2000.¹³² However, this behavior can be problematic given the lack of any systemic method to ensure that the trade only benefits the civilian population and not the repressive regime. Furthermore, there is no comprehensive ban from the EU to prohibit major European banks and corporations from engaging with government entities with Myanmar, allowing the repressive regime to benefit from continued businesses. As a result, the Burmese regime leaders managed to retain various financial connections that have enabled it to stay afloat amidst strict sanctions from the U.S. Thus, despite the strong humanitarian rhetoric expressed by both the United States and many European countries, there is clearly a lack of coordination in sanction policies that weakens any international efforts to bring the regime to collapse.

IV. Conclusion

Our literature review has pointed out three important factors in determining the success of sanctions and engagement. First, a country’s regime type can significantly deter the effects of economic sanctions; in the case of Burma, its political structure has allowed the regime to pass the cost of sanctions onto the public. International efforts have not been successful in incentivizing political elites to promote ethnic unity; instead, they remain fixated on goals of national sovereignty. Furthermore, the opening up of political space has

¹³¹ Pederson, ‘Promoting Human Rights’, 35.

¹³² Thawnghmung, ‘Myanmar Impasses’, 57-58.

only worsened ethnic crisis as each groups manipulate communal violence for their own gain. Second, the literature has shown that economic engagements must be tailored to benefit the population instead of the regime. However, Burma's "ceasefire capitalism" has effectively ensured that the ethnic minorities remain oppressed and marginalized despite increased foreign investment, while the regime becomes more rich and powerful. Lastly, countries like the U.S and the U.K have been unsuccessful when it comes to sanctions, largely a result of a coordination problem. Consequently, the regime has been able to benefit from incoherent policies by trading with different partners.

From our analysis, this thesis concludes that there exists an incentive problem at two levels. First, at the domestic level, tools of economic engagement have not worked to socialize Burma's elites into changing their repressive behavior; instead, they continue to benefit from current repressive policies without needing to promote better humanitarian protection for the Rohingyas. Second, international actors remain at odds regarding the best approach. The strict strategy from the U.S. is undermined by the relatively lax policies of European countries, while neighboring countries like China and India has other geopolitical and economic interests in preserving the stability of Myanmar's military regime. The lesson for the human rights community, therefore, is how to better engage both domestic actors in Burma as well as international state actors to perceive humanitarian values as the first and most important priority.

CH. 4: CONCEPTUALIZING HUMAN RIGHTS

Beyond using tools of international criticism or economic coercion, the human rights community has a last resort for protecting the Rohingyas: military intervention. This coercive action against a state to protect people against mass atrocities has happened before: Liberia in 1990, Somalia in 1993, Haiti and Rwanda in 1994, Bosnia in 1995, and East Timor in 1999 just to name a few. With the onset of globalization, *The Responsibility to Protect (R2P)* now refers to the ability of outside actors to carry out this method. However, this tactic comes with many problems on its own, and legal debates continue on the who, when, and how of intervention. Our analysis will focus on the legal and normative complications of these questions, and how this problem has affected international response to the Rohingya crisis.

First, a literature review will attempt to unravel the tensions between human rights values and the respect for state sovereignty. Our analysis will shed light on the debate of what it means to have “basic” human rights, as well as the coercive capacity of outside actors to impinge on a nation’s sovereignty for the sake of intervention. Then, we will discuss the history of humanitarian intervention in Burma, which will highlight how this incoherence has played out within the country. Particularly, the regime’s conception about justice and rule of law helps to explain why the fight for human rights has been a slow work in progress. Lastly, our analysis shows the problems of incoherence because it creates disagreements between regional organizations like the EU and ASEAN, preventing further international cooperation. This disagreement is a result of a missing legal framework that addresses the tensions between human rights and state sovereignty, creating a gap in policy response that can adequately protect the Rohingyas against mass atrocities. Therefore, this chapter concludes

that any future action must first resolve this conceptualization problem and provide a stronger legal foundation for humanitarian intervention in the future.

I. Literature Review

With the increasing pace of globalization, it is widely assumed that the global order serve, or should serve, the promotion of human rights. In contrast to the Westphalia system of absolute sovereignty, international and transnational actors now hold states accountable for basic human rights. If the state is deemed unfit to provide this protection, it is the *responsibility* of the international community to step in. This doctrine is now referred to as the Responsibility to Protect, R2P, designating the responsibilities of the international community to intervene should the state be unwilling or unable to provide protection. Although this authority is traditionally placed solely in the power of the United States Security Council, some countries have also unilaterally pursued this option.¹³³ However, this commitment is controversial because it gives rise to two important questions: (1) What constitute “basic” human rights? (2); To what extent can the Responsibility to Protect (R2P) impinge upon the sovereignty of a state?

Redefining Human Rights

Our international order has evolved: Human rights are now considered a matter of law – granted to each and every person. Surely, this order requires a universal realization of what is considered basic human rights. Yet, contemporary debates remain split on what exact does basic human rights entails? By what virtue are they “basic”? We will discuss two different conceptions of human rights: a substantive account and a functional account. The substantive account begins by defining human rights as a universal moral notion, while a functional account defines human rights in terms of its political function. The contrasting

¹³³ George W. Bush’s “War on Terror” is a prime example.

methodology will highlight key institutional implication of each, as well as demonstrate how different definitions of human rights create distinctive human rights agendas.

First, the substantive account begins with a moral agenda for the conception of human rights. In this narrative, the concept of human rights is issued directly from the identification with *natural rights*. The 1948 Universal Declaration declares that: “All human beings are born free and equal in dignity and rights.”¹³⁴ In essence, substantive accounts make the claim that basic human rights must protect the universal and moral notion of natural rights: the right to human dignity and personhood. This definition creates a broad list of human rights, simply because human dignity and personhood can have multiple interpretations.

In particular, political scientist James Nickel argues that human dignity can reference any particular feature of a person that has a distinctive value (such as self-understandings, their values, their rationality, their social awareness).¹³⁵ In his article, he detailed four starting points that he believe should be the basis of human dignity, but he also maintains that the list of human rights should be more expansive to reflect different values essential to one’s personhood.¹³⁶ Thus, Nickel explicitly rejects the view that human dignity can only be found exclusively in autonomy or agency. Similarly, the Universal Declaration of Human Rights has included other socioeconomic rights, such as the right to education or even a right to a paid vacation.¹³⁷ In short, the substantive account defines human rights as a requirement for human dignity, rooted in basic values and moral interests of human persons. Most

¹³⁴ Universal Declaration of Human Rights (UDHR), Article 1.

¹³⁵ Nickel, ‘Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights’, 53-69.

¹³⁶ The four basic claims include: a secure claim to have a life, a secure claim to lead one’s life, a secure claim against severely cruel or degrading treatment, and a secure claim against severely unfair treatment. He also supported other claims, such as the claim to property.

¹³⁷ UDHR, Article 24 and 26.

importantly, the implications of the substantive account create a very extensive list of what constitute “basic” human rights.

On the other hand, the functional account conceptualizes human rights in terms of its political function, starting with the question: What are human rights supposed to do? This approach takes issue with the substantive account, arguing that we must consider the reality of existing institutions and practices. Since there are different ways in which human beings define self-understandings, interests, and so on, justifying human rights in this framework will simply create a utopian and possibly unrealistic conception of justice.¹³⁸ Instead, John Rawls’ *A Theory of Justice* provided an alternative definition of human rights in terms of its practical application. To simplify his argument, the function of human rights to limit state sovereignty, justify coercive intervention, and provide a minimum conception of justice.¹³⁹ For example, the international community has a justified reason for humanitarian intervention if the target state has committed atrocities on the extreme scale, such as genocides or ethnic cleansing. However, that logic also greatly limits the list of human rights, since one would not expect the UN to invade a country simply because its citizens lack the rights to a paid vacation. His argument has been widely criticized as parochial, and some critics believe we should view human rights as a moral aspiration rather than reducing it to a political objective.¹⁴⁰

Redefining State Sovereignty

In a Post-WWII context, sovereignty became constrained by human rights. States no longer enjoy the absolute independence they had during the Westphalia system. Instead, the international community now has the *responsibility* to protect if it deems a state unable to

¹³⁸ Reidy, ‘Human Rights: Institutions and Agendas’, 383-384.

¹³⁹ Rawls, ‘A Theory of Justice’.

¹⁴⁰ See Wilkins (2008); Cohen (2004).

protect or represent the citizen's wishes – or in other words, if it deems a state to be illegitimate. Yet, there can be multiple definitions of legitimacy; we typically think of Kim Jong Un's dictatorship to be illegitimate, but what about a nation that is currently undergoing a civil war? Can't the civil war be considered a legitimate expression of the nation's self-determination? This brings us to an important implication: State legitimacy must be defined in a way that not only allows room for the state to exercise its autonomy, but still clearly lays out scenarios in which the international community can justify humanitarian interventions. We shall look at two different perspectives that will provide deeper insights into what it means for state to have sovereignty and how that sovereignty is defined by different ideas of legitimacy.

Michael Waltzer has argued that sovereignty is aimed to protect the right of self-determination for a political community, a community where people share national identities and history.¹⁴¹ This self-determination reflects a “fit” between its government and its community, something that foreigners must respect – and it cannot be taken away during a civil war. Furthermore, authoritarian states must also be accorded the same legitimacy as democracies, since “the history, culture, and religion of the community may be such that authoritarian regimes reflect a widely shared world view or way of life.”¹⁴² Thus, the international community must withhold its judgment and yield to the political process, “with all its messiness and uncertainty, its inevitable compromises, and its frequent brutality.”¹⁴³

On the other hand, David Luban argues that the state derives legitimacy from a “vertical contract” between each citizen and the state, in which the political communities

¹⁴¹ Waltzer, ‘The Moral Standing of States: A Response to Four Critics’, 212.

¹⁴² Ibid., 225.

¹⁴³ Ibid., 229.

explicitly consent to be governed.¹⁴⁴ An illegitimate state then, the argument follows, is one that is governing without the consent of the governed. When a political community is oppressed because they no longer consent to this government, this “vertical contract” is then violated, constituting justifiable grounds for international interventions. Luban’s definition allows for the international community to intervene militarily anytime the state violates basic human rights (defined by Luban as “rights needed to enjoy all other rights”). This definition contrasts greatly with Waltzer’s, which generally disregards humanitarian concerns as a justifiable reason.¹⁴⁵ In short, while political scientists generally agree that a state must be considered legitimate in order for the duty of non-interference to exist, there remains an ambiguity on how to balance humanitarian concerns within the constraints of state sovereignty.¹⁴⁶

What does the literature tell us about Burma?

First, the arguments laid out by Nickel and Rawls have highlighted that there are no easy definition of what it means to have basic human rights. Yet regardless of which methodology we use to define human rights, it is implicated that the principles of justice governing our global order differs greatly in content, nature, function or institutional forms. Thus, we must view the situation in Burma with an understanding that the basis of human rights can hold different meanings for various actors. Second, the lack of coherence on this definition creates another problem regarding state sovereignty. The debate between Waltzer and Luban has showcased the ambiguities of when the human rights community can justify its intervention that best respects the laws protecting a state’s independence. This discourse

¹⁴⁴ Luban, ‘Just War and Human Rights’, 167-169.

¹⁴⁵ Waltzer only offered one exception for intervention based on humanitarian issues: genocide. His minimalist view raises a high standard of what can be considered human rights violations.

¹⁴⁶ Luban, ‘Just War,’ 165.

becomes particularly applicable to the situation in Burma, which the national government has repeatedly argued is a domestic issue. For instance, at the UN's General Assembly, Myanmar has criticized international involvement as "coercive measures aimed at exerting political pressure under the guise of human rights", and called for a respect for Burma's national sovereignty.¹⁴⁷ Thus, the international community must better navigate these political complexities in order to place human rights concern at the forefront of policy. Historically, however, international engagement has fallen short of expectations when it comes to Myanmar. The rest of this chapter attempts to demonstrate how this conceptualization issue has resulted in problems at a domestic and regional level, preventing effective actions in Burma.

II. Humanitarian Protection in Burma

Currently, the Burmese regime has taken steps to address the human rights crisis in the country. In the context of reforms, the government established the Myanmar National Human Rights Commission ('Myanmar Commission'), which under the eyes of the international community was a strong step toward resolving rampant human rights violations. However, the Commission has done little to address the grievances in the Rakhine State. Following an incident in 2012, the Commission failed to launch an investigation, while its statement of support was only targeted toward Burmese nationals instead of the Rohingya population.¹⁴⁸ In addition, the Commission has been criticized due to its lack of independence from executive powers in Burma; it is highly dependent on orders from the

¹⁴⁷ UN, Third Committee Approves 16 Drafts with Friction Exposed in Contentious Votes on Glorification of Nazism, Cultural Diversity, Right to Development. Press Release.

¹⁴⁸ Myanmar National Human Rights Commission, Statement No. 4/2012 concerning incidents in Rakhine State in June 2012.

Burmese President and often only issues statements that back the government's positions.¹⁴⁹ Consequently, the reactive nature of the Myanmar Commission serves as a prime example of how Burmese's domestic politics has interfered with the implementation of human rights policies. Particularly, an exploration Burma's conception of justice and how it differs from Western liberal tradition will shed light on this issue.

As the literature review noted, different actors can have differing conceptions relating to human rights and state sovereignty. In the case of Burma, the historical foundation of its legal institution has not allowed much room for the development of what is considered the European model of justice. Instead, the way Burmese government define rights is often contingent and contested as a political concept. Elliott Prasse-Freeman, in his analysis of the power apparatus within Burma, has argued that the Burma's pre-colonial history has shaped much of how they define "rights." Since the Burmese kings rule their subjects based on divine authority, the ruler's legitimacy is based on Buddhist cosmology rather on the rights of the governed.¹⁵⁰ Such a system – where rights are not derived from its citizens – holds many implications for how Burma enforces rule of law. In particular, Prasse-Freeman found that discussions relating to health, education, and the struggle to survive are absent from justice system, and people often do not even consider these issues as pertaining to the state.¹⁵¹ Consequently, the institutionalization of these different values has resulted in a lack of mechanisms in which people can submit their grievances. Nick Cheesman, in his groundbreaking study of Burmese legal practices, suggested that pathways for justice claims

¹⁴⁹ Crouch, 'Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia', 168-171.

¹⁵⁰ Prasse-Freeman, 'Conceptions of Justice Vs. the Rule of Law', 96-98.

¹⁵¹ Ibid., 102.

are limited, if not nonexistent.¹⁵² Even if they are available, he contends, they are still “subject to decision making that is arbitrary, unlikely to yield outcomes in the citizen's favor, and ultimately unenforceable.”¹⁵³ Thus, one can see where the domestic politics of Burma has shaped a rather narrow and vastly different conception of justice and by extension, of what it means to have rights.

Beyond this issue, the international community has also failed to understand how Burma's definition of rule of law has affected a host of other problems, particularly the ways in which the military regime has linked the language of peace with the need to impose strict, authoritarian measures for the sake of security. For instance, in response to the outbreak of ethnic conflicts, President Thein Sein declared an emergency period and authorized the army to do whatever necessary to protect the peace – this meant curfews, prohibiting assemblies, seizing weapons, and whatever is needed to enhance the “ineffective rule of law” that caused the conflict.¹⁵⁴ What is striking here is that the government, in blaming the crisis on a weak security apparatus, has effectively shifted the conversation away from the political and economic rights of the Rohingya. Instead, “The language of the rule of law also serves as a shield against criticism over handling of the violence. It accounts for why things go wrong, and justifies measures taken to obtain security through law enforcement,” according to Cheesman. Even Aung Sang Suu Kyi's response to the violence in 2012 has taken along this narrative of blaming the conflict on an ineffective security system. In a talk, she stated: “The very first crime that was committed a few months back, if that had been handled in accordance with rule of law principles ...then justice should not only have been done, but

¹⁵² Cheesman, ‘What does the rule of law have to do with democratization (in Myanmar)?’, 221-229.

¹⁵³ Ibid., 223.

¹⁵⁴ Ibid., 228.

seen to be done.”¹⁵⁵ Thus, the government of Burma has traditionally stressed the importance of a rule of law that has not only allowed them to divert away international criticisms but also embolden the strength and capacity of the armed forces.

As a result, there are many implications to this conceptualization problem in the Rakhine State. First, the continued language about a weak rule of law has further worsened the situation for the Rohingyas. It not only empowered the policing units to use almost unrestrained force on the general population, but it also served to exclude the Rohingyas from the government’s protection. Since the rhetoric of rule of law is concerned with ensuring that the peace is upheld and the security measures are followed, anyone who commits a crime is no longer just considered a perpetrator, but rather a criminalized enemy who threatens the internal peace of the state.¹⁵⁶ Rohingyas, in addition, are marginalized because the government does not accord them the same rights as a citizen, given that the protection of rule of law only covers those considered politically legitimate. Thus, rule of law discussions in the Rakhine State has generally been concerned with identifying sides and making enemies instead of focusing on improving issues of ethnic relations. In addition, the regime’s framing of the crisis as a rule of law issue has only served its argument that this is a domestic problem, not an international one. By conceding that the Rohingya crisis is a security issue and essentially a policing problem, the regime has effectively framed the issue as a problem for the internal peacekeeping forces, rather than those concerned with the individual rights of the Rohingya.

The international human rights community, on the other hand, has yet to grasp the implications of Burma’s internal political complexities. International response fails to include

¹⁵⁵ Jha, ‘Suu Kyi Backs Govt to Diffuse Arakan Tensions,’ *The Irrawaddy*. 19 Sept. 2012.

¹⁵⁶ Cheesman, ‘What does the rule of law have to do with democratization?’, 227-228.

measures that target the deeper problem of Burma's legal institutions, focusing instead on the repatriation of refugees and increasing accountability of the armed forces.¹⁵⁷ Meanwhile, the Burmese government continues to assert that it is doing everything to maximize its rule of law capacity and that its independence should be respected in this process. As a result, this conceptualization issue, stemming from an incoherent international standard on the definitions of human rights and state sovereignty, has prevented outside actors to coordinate an effective response. Future international engagement efforts must focus on assisting Burma to conceptualize its definitions of justice and to provide more legal institutional pathways for rights claims.

II. Diverging Conceptions between EU and ASEAN

The discourse on whether international law should respect state sovereignty can best be explained by the diverging perceptions between the EU and ASEAN. As the primary regional infrastructure in the Southeast Asia, ASEAN serves as the most important forum for member nations to build peace and stability. However, many criticized that ASEAN has consistently failed to protect human rights in its 50-year history.¹⁵⁸ Most recently, it has received backlash for ineffective handling of the Rohingya crisis. Following a massive wave of atrocities in November, the organization issued a statement that was considered “toothless at best” by international standards, namely because the statement did not take a hardline stance against the regime.¹⁵⁹ Its members were accused of being more committed to

¹⁵⁷ See for example, State Department's Background Briefing On Secretary Tillerson's Trip to Burma. 14 Nov 2017. <https://www.state.gov/r/pa/prs/ps/2017/11/275604.htm>

¹⁵⁸ Gavilan, Jodesz. 'The deafening silence of ASEAN on human rights violations.' *Rappler*. 13 Nov. 2017.

¹⁵⁹ France-Presse, Agence. 'ASEAN silent on attacks on Rohingya', *ABS-CBN News*. 17 Nov. 2017.

“preserving the regime rather than securing their people.”¹⁶⁰ Yet what factors can account for ASEAN’s inaction and silence? Is it that simply ASEAN members prioritize regime survival at the expense of human rights concern?

In order to understand the perspectives of ASEAN, this section will provide a brief contrast between the institutional structure of ASEAN and EU. Namely, ASEAN prefers to maintain an approach of “constructive engagement” while the EU adamantly pursues a strategy of Western isolation. Traditional scholarly works that analyze the effectiveness of international engagement, however, have mainly represented a Western perspective – one that criticizes ASEAN for its lack of punitive enforcement mechanisms and its preferred method of quiet diplomacy – and suggested solutions that are both implausible and insensitive.¹⁶¹ These lines of analysis are problematic because they ignore wider range of actions that ASEAN may be attempting. This paper, therefore, will attempt to demonstrate the diverging membership norms between the EU and ASEAN that can explain for this gap. Ultimately, I will argue that an incoherency problem – as described in the literature review – has caused these IGOs to have diverging conceptualization on how to solve the Rohingya crisis.

First, the EU has adopted a very Western liberal tradition. As discussed in Kerstin Schembera’s work that compares these interregional structures, the EU is rested on the idea that states must pool together their sovereignty to a supranational level of authority that is

¹⁶⁰ Chachavalpongpun, Pavin. ‘Is Promoting Human Rights in ASEAN an Impossible Task?’ *The Diplomat*. 19 Jan. 2018.

¹⁶¹ See Haacke (2010), which suggests that ASEAN’s weakness is in its inflexibility, different level of motivations to promote democracy in member states, and an overall regional need to preserve unity.

capable of regulating the members' domestic affairs.¹⁶² By partially delegating each member's national sovereignty, the members agree to a compliance method that allows the EU to enforce sanctions or rewards depending on the according behaviors. In contrast, the original creation of ASEAN was based on regional norms that emphasize cooperation among states. Due to the diverse characteristics of their 10 members, it was important during ASEAN's inception that this multilateral organization was a partnership, not an imposing entity like the United Nations or the European Union. Notice ASEAN stands for an *Association*, aimed to promote regional peace through constructive engagement and dialogues – this creates the 'ASEAN Way' of diplomacy. One can clearly see these values reflected at the first ASEAN Summit, where the members signed a treaty clearly outlining guidelines for interaction within the organization, including values like mutual respect, non-interference, and effective cooperation among states.¹⁶³

As a result, ASEAN's non-interference norm then translated into an institutional structure that greatly limits the ability of the organization to punish its members. From its very start, the 'ASEAN Way' has made clear that coercive measures would not be used and has actively discouraged member states from intervening in other's domestic affairs.¹⁶⁴ Thus, the membership nature of this IGO has effectively refrained it from imposing punitive measures, focusing instead on the approach of "quiet diplomacy."¹⁶⁵ This method has translated into its approach toward the Rohingya crisis as well. For instance, Myanmar's entry into ASEAN was not made based on any membership demands toward the military

¹⁶² Schembera, 'The rocky road of interregionalism: EU sanctions against human rights-violating Myanmar and repercussions on ASEAN-EU relations', 1025-1027.

¹⁶³ Treaty of Amity and Cooperation in Southeast Asia, Article 2, 24 Feb. 1976.

¹⁶⁴ Ciorciari, 'Institutionalizing Human Rights in Southeast Asia', 697.

¹⁶⁵ Davies, 'The Perils of Incoherence: ASEAN, Myanmar and the Avoidable Failures of Human Rights Socialization', 4.

junta or any pressures toward changing its political nature. Instead, the partnership reflected ASEAN's values of diversity and mutual respect: "The system we started off was not on conditionality, but accepting that we are all different", as remarked by Former Singapore Foreign Minister.¹⁶⁶ As the crisis continue to escalate, ASEAN has never taken a public stance against the regime, choosing rather induce an inclusive process through persuasive dialogues and behind-the-scenes negotiation. The hope is that continued engagement and emerging economic growth will help to steer Burma toward the final aim of promoting human rights values and democratic practices.¹⁶⁷

Some scholars have argued that ASEAN's approach is ineffective and the member states may be unwilling or unable to rise to the challenge. Haacke, for instance, have criticized ASEAN for its inflexibility, arguing that a demand for regional unity has overshadowed other humanitarian objectives.¹⁶⁸ However, such analysis fails to take into account the deeper differences within the Asia-Pacific relating to norms about state sovereignty and human rights. While it is certainly true that nature of ASEAN's apparatus leaves less leveraging room when compared to its Western counterpart, it is important to remember that the IGO is taking proactive steps to improve its tactics. For instance, ASEAN established two new human rights bodies in 2010: the Intergovernmental Commission on Human Rights and the Commission on the Promotion and Protection of the Rights of Women and Children.¹⁶⁹ Furthermore, despite their inherent institutional structure, there can be some instances where the 'ASEAN Way' is a better approach. For example, a scholar has argued that by maintaining an overall collaborative stance, ASEAN was able to play an interface

¹⁶⁶ Schembera, 'The rocky road of interregionalism', 1032.

¹⁶⁷ Ibid., 1031-1035.

¹⁶⁸ Haacke, 'The Myanmar imbroglio and ASEAN: heading towards the 2010 elections', 174.

¹⁶⁹ Giorciari, 'Instituionalizing Human Rights', 1-4.

role in the human rights community as the only actor accepted by the Burmese regime.¹⁷⁰ This has led to several achievements, such as the negotiation with the military junta that allowed international aid to reach the population, as well as the contribution to Burma's democratic reforms in 2008. Thus, while this paper recognizes the many limitations that ASEAN must face, it is important to acknowledge that the 'ASEAN way' is still making progress toward change, albeit slowly.

Meanwhile, EU engagement efforts have only been counterproductive in the region. For example, the EU has opted for heavy-handed pressures and harsh criticism that alienated public opinion in Burma. In one instance following the monk's Saffron Revolution in 2007, the IGO expressed horror at the regime's brutality and merely called for recognition as well as solidarity with the population, but actually did little to solve the crisis through dialogues or economic engagement.¹⁷¹ Instead, it stuck with the use of declaratory rhetoric through its civil society groups and media, which has been criticized as 'feel-good diplomacy.' In regard to the Rohingya crisis, the EU has traditionally maintained a narrow demand for the release of Suu Kyi, criticized the ASEAN's method of constructive engagement, and has often refused to sit down for negotiations. As a result, the response within Burma has expressed disappointment toward the Western way of isolation: "The truth is those pro-democracy people abroad and the Western governments have their own fantasy as to what things should be like in Myanmar...They don't pay attention to what we really want and how we want things to be."¹⁷² Even democratic groups in Burma has denounced the EU's selectivity and

¹⁷⁰ du Rocher, 'How Does the past Shape the Present? The EU Policy Towards Myanmar in Inter-Regional Context', 199.

¹⁷¹ Ibid., 203-205.

¹⁷² Ibid., 203.

denounced its political hypocrisies when the IGO remained silent as many Burmese activists were executed.

As the crisis continue to escalate today, the EU has set up sanctions against Burma and is pursuing its approach of harsh restrictive measures.¹⁷³ In doing so, the EU continues to push Burma into a Western conception of human rights norms that ASEAN vehemently advocates against. As du Rocher argues, “Europe failed to understand and admit that the Burmese military leadership was ultimately as much part of the solution as the problem.”¹⁷⁴ Meanwhile, the EU and ASEAN are still at odds about which approach to utilize, and a collective international action remains fragmented by this conceptualization problem.

IV. Conclusion

In 2008, Burma was struck with Cyclone Nargis, which left more than 138,000 people dead.¹⁷⁵ Following the natural disaster, the junta government blocked international aid delivery much to the dismay of human rights advocates. Furthermore, the military regime banned doctors, disaster relief experts, and aid workers from entering, further exacerbating the humanitarian crisis.¹⁷⁶ While major leaders expressed outrage over Burma’s action, not much was done by the United Nations in context of the *Responsibility to Protect (R2P)*. The Burmese people were left with no assistance from the military junta or from the global community. This prime example demonstrates that even when the doctrine of R2P has become widely accepted as part of international norms, it still clearly lacks robust legal tools

¹⁷³ Emmott, ‘EU Set to Prepare Sanctions on Myanmar Generals: Diplomats,’ *Reuters*. 22 Feb. 2018.

¹⁷⁴ du Rocher, ‘How Does the Past Shape the Present?’, 207.

¹⁷⁵ Burma, CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>

¹⁷⁶ Mydans, ‘Myanmar Seizes U.N. Food for Cyclone Victims and Blocks Foreign Experts,’ *New York Times*. 10 May 2008.

to effectively promote human rights. This gap is a result of the conceptualization problem that this thesis has attempted to highlight.

First, the literature review has illustrated the important debates surrounding what it means to have ‘basic’ human rights as well as how can humanitarian action justifies the impingement upon a state’s national sovereignty. In the case of Burma, an analysis of Burma’s legal institutions has provided us with an alternative definition of rule of law. In particular, Burma’s rule of law rhetoric emphasizes obedience and absolute power of the state, not substantive values of democracy or equality. As a result the humanitarian crisis is worsening, as the Rohingyas have no legal access to justice and the government continue to frame the situation as a domestic issue. On the other hand, this conceptualization problem also dampened cooperation between interregional organizations like the EU and ASEAN, where an incoherent international standard on human rights enforcement has created disagreements between both groups. Consequently, the EU’s restrictive measures only serve to thwart ASEAN’s constructive engagement and vice versa, allowing the Burmese regime to escape the cost of sanctions and the bloodshed to escalate. This chapter, therefore, has demonstrated the problems associated with diverging conceptions about human rights and sovereignty norms. The task now is for future engagement to provide a stronger, international legal standard on humanitarian values as well as the enforcement mechanisms necessary.

CH. 5: ANOTHER WAY FORWARD

This thesis so far has argued that there are three problems in the current international approach toward the Rohingya issue: framing, incentives, and conceptualization. More fundamentally, these issues are derived from moral and political ambiguities – either in our Western culture or in Burma's. As a result, the attempts of the international community to engage better humanitarian protection for the Rohingyas have created policies that are both incoherent and intolerant. Decades of diplomatic pressures and sanctions have yet to impact the capacity or the willingness of the military regime to change their behaviors. This chapter, then, shall explore avenues for future engagement efforts, focusing on options that include a stronger legal framework, smarter sanctions, and an emphasis toward cooperative diplomacy.

Stronger Legal Framework

In order to understand how the *Responsibility to Protect* doctrine has been so ineffective in the Rohingya crisis, we must understand that there exists a gap in the legal foundation for better human rights protection. Alison McCormick, a legal scholar who has advocated for human rights in Burma, contends that the United Nations currently lacks a robust legal tool to pursue and prosecute humanitarian violations, and there needs to be a stronger framework in international law that clearly outlines our R2P duties. According to McCormick, the current doctrine that the UN is operating under – the Outcome Document – is a diluted version of an original, stronger R2P doctrine.¹⁷⁷ The comparison between the two will illuminate our arguments on what needs to be done in order to provide the Rohingya with more legal protection.

¹⁷⁷ McCormick, 'From Sovereignty to Responsibility: An Emerging International Norm and Its Call to Action', 565.

First, the International Commission on Intervention and State Sovereignty (ICISS) wrote the original conception of R2P, clearly outlining the responsibility of the international community to intervene should the state be unwilling or unable to provide protection.¹⁷⁸ This first document (referred to as ICISS document) provided robust enforcement mechanisms for the international community to follow, such as sanctions or diplomatic pressure.¹⁷⁹ Most importantly, the ICISS document outlined guidelines for the use of military interventions if necessary. In short, four precautionary principles of right intention, last resort, proportional means, and reasonable prospects can justify the use of force.¹⁸⁰ Scholars have argued that this report provides a strong, legal foundation for the international community to respond to violations.¹⁸¹

This document, however, has been diluted into a weaker resolution when it was adopted by the United Nations in 2005.¹⁸² The second version, called the Outcome Document, lacks many of the enforcement tools included in its original conception. First, the document was not legally binding, and thus exists as a treaty rather than part of an enforceable international law.¹⁸³ Second, the Outcome Document raises the threshold for what could justify outside intervention. While the ICISS Document has argued that any situations that cause large-scale loss of life could qualify (such as natural disasters), the Outcome document limited interventions to only circumstances of genocide, war crimes, ethnic cleansing and crimes against humanity.¹⁸⁴ Similarly, the Outcome Document included

¹⁷⁸ International Commission On Intervention And State Sovereignty, *The Responsibility to Protect*, 11-16.

¹⁷⁹ *Ibid.*, 23-27.

¹⁸⁰ *Ibid.*, 29-35.

¹⁸¹ McCormick, 'From Sovereignty to Responsibility', 568-571.

¹⁸² United Nations, 2005 World Summit Outcome.

¹⁸³ *Ibid.*, paragraphs 138-139.

¹⁸⁴ *Ibid.*, paragraph 139.

the requirement that states must demonstrate a “manifest failure” to protect its citizens, without clearly defining what that constitutes.¹⁸⁵ Finally, the Outcome Document places the authority solely in the powers of the Security Council on a case-by-case basis, taking away the abilities of other actors to initiate collective actions.¹⁸⁶

In short, this highly narrow adoption of R2P has absolved states of any responsibilities to act and diluted the purpose of the doctrine. These glaring shortcomings were factors that led to the international community’s ineffectiveness during the 2008 Cyclone Nargis. Since the Outcome Document did not mention the use of R2P in natural disasters, the global community hesitated to act, ultimately resulting in the death of many innocent lives. Thus, this paper has demonstrated that the UN must revise and embrace a stronger *R2P* doctrine that resembles the original ICISS document – one that directly puts the responsibility onto the state apparatus, provides the appropriate international capacity for assistance, and emphasizes the values of humanitarian protection over other interests.

Smarter Sanctions

While improving the legal foundations can be the quickest and most effective way to increase our international assistance capacity, there must be other means of engaging the Burmese regime in the process. Namely, sanctions may prove to be a helpful tool in inducing the regime to make the appropriate changes. While the correlation between the use of sanctions and the increase in humanitarian violations has been noted, it is still important to maintain outside pressures in order to isolate the military regime.¹⁸⁷ More importantly, we must improve on past practices to create a better, more comprehensive core strategy that

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ See Peksen (2009).

utilizes more realistic benchmarks for progress; this can be done through the implementation of smart sanctions.

Smart sanctions are simply sanctions that are targeted toward a specific population. One scholar, Susan Allen, has argued that smarter sanctions can be more effective because it is directly targeted toward those in power – those whose behavior we wish to change.¹⁸⁸ This form of sanctions can work to decrease the resources of a specific group and impose economic consequences through the use of asset seizures, accounts freeze, travel restrictions, and embargoes. Overall, this form of targeted pressure will directly induce a specific group to make the necessary policy changes by increasing the cost. Allen described the use of smart sanctions as having an impact in South Africa, where the ban on diamond trade impacted the business elites and the ban on participating in international sporting competitions was strongly opposed by white African Americans.¹⁸⁹ In another example, targeted sanctions worked to induce Libyan officials to turn a bombing suspect over the international authorities, after financial sanction measures put a freeze on the elites' bank accounts.¹⁹⁰

In addition to the benefits of imposing economic costs on the political leadership, targeted sanctions can also work to strengthen the opposition capacity of democratic forces in Burma. Kaempfer and Lowenburg, in their review on the use of sanctions, have stated that often times sanctions work by sending a message that strengthens the collective action among the political opponents.¹⁹¹ In particular, the use of sanctions signal to actors inside the countries that they have external support, thus providing the additional support and optimism about the viability of their opposition. One example was the US sanctioning of the Trujillo

¹⁸⁸ Allen, 'Rallying cry? Economic sanctions and the domestic politics of the target state', 142-143.

¹⁸⁹ Ibid., 142.

¹⁹⁰ Ibid.

¹⁹¹ Kaempfer and Lowenberg, 'Targeted Sanctions: Motivating Policy Change', 70-72.

regime in Dominican Republic in 1960s, which provided vital support to the opposition groups.¹⁹² Overall, the examples above demonstrated that targeted sanctions can induce domestic political changes in countries by (1) socializing the target's political leadership through imposing economic costs; and (2) strengthening political coalitions that are more moderate through sending a support signal.

It is important to note that while targeted sanctions can help to achieve these goals, sanction policies should not create political deadlocks or zero-sum games. Morten Pederson has continuously put forth the viewpoint that Western sanctioning should pursue policies that require Western governments to make compromises with the regime, instead of denying foreign aid and trade that directly impacts the population. Often times, Western approaches tend to be intolerant of those whose values do not fit our own, but in the case of the Rohingyas, the building of long-term peace and democracy requires more dialogues that encompass perspectives of the people there. In his words, "To be effective, international approaches must reflect realities on the ground in Burma, not be imported cookie-cutter style from other continents."¹⁹³

Cooperative Diplomacy

While sanctions and legal doctrines may prove effective in coercing the regime, this author recognizes that the Rohingya crisis has its roots in many social and political misunderstandings, and a western approach that utilizes 'cookie-cutter style' lacks a deeper understanding of the historical complexities within Burma. Following that perspective, this section concludes by discussing the importance of a cooperative approach, one that emphasizes the use of dialogues to promote perception awareness between both sides.

¹⁹² Ibid., 70.

¹⁹³ Pederson, 'Promoting Human Rights', 262.

First, a number of scholars have called for a change in the international naming and shaming approach. Former journalist Francis Wade contended that the advancing democratization process has only fed fears among the Buddhist majority – fears that sympathetic attitudes toward the Rohingyas abroad will marginalize ethnic Burmans in their own state, fears that they are being left behind by the international community, fears that in turn has only increased massive violence.¹⁹⁴ In addition, Jacque Leider has also argued that the victimhood discourse – in which international media focuses solely on the plight of the Rohingyas – has reinforced the prejudices and discrimination in the Rakhine State. He suggests that future discussions about the issue should include historical research that not only acknowledges the identity and history of all people in the crisis, but also allow space for the ethnic Rakhines to express their discontents.¹⁹⁵ Similarly, Ardeth Thawnghmung also argues that the international community often discredits the views of the Buddhist majority. Strong diplomacy tactics such as demanding the Rohingyas be granted full citizenship status or providing aid access exclusively toward Muslims only serves to alienate the Buddhist Rakhines.¹⁹⁶ She contends that while it may be easy for those abroad to promote rhetoric of social justice and pluralism, it is more difficult for those in Burma, who have experienced such disenfranchisement and long-held grievances, to accept these zero-sum solutions.¹⁹⁷

Thus, cooperative diplomacy requires Western governments and IGOs to change their Euro-centric approach. Sophie du Rocher puts forth that we need to do a better job at nurturing connections and personal dialogues with the Burmese political leadership. According to her, the EU has generally “stuck to its implicit mission of spreading democracy

¹⁹⁴ Wade, ‘Myanmar: Marketing a Massacre.’ *The New York Review of Books*.

¹⁹⁵ Leider, ‘History and Victimhood: Engaging with Rohingya Issues’.

¹⁹⁶ Thawnghmung, ‘The politics of indigeneity’, 542.

¹⁹⁷ Ibid. 543.

as a co-substance to its identity”, but this approach has been criticized by Asian neighbors as not genuine “in serving multilateralism and a mutually positive relationship.”¹⁹⁸ Instead, future engagement must focus on promoting well-intentioned diplomacy that takes into account the pressing challenges that Burma faces. For example, the International Federation for Human Rights (FIDH) can serve as a model for international engagement with Burma. Its mission is to transform societies by relying on the expertise of local actors. By operating on the basis of interaction with its member states, the organizational structure of the FIDH allows for actors at a societal level to have a direct voice and impact in the policy-making process. Its focus on transparency and joint action is precisely what can bring local actors in Burma into the conversation.

Yet despite the benefits of adopting a stronger multilateral approach, the author recognizes that there still remain certain limitations to international engagement efforts, and it is important to recognize the realities of Burma’s political situation. Bertil Lintner, a journalist who specializes in Burma, has repeatedly stressed the power that the military holds within the political system. With a guaranteed 25 percent of seats in the National Assembly, control of the three most important ministries (Defense, Home Affairs and Border Affairs), and a deep-rooted need to preserve its dominance, Lintner is skeptical that the military will take any actions that align with international expectations in the near future.¹⁹⁹ Nonetheless, he argues, the military remains the most important player in the crisis, and any changes in their behaviors can only come from developing a stronger civil society within the country.

Currently in Burma, there are already voices paving the way toward achieving this goal. Ma Thida, a dissident activist who was jailed by the military, has been publicly active

¹⁹⁸ du Rocher, ‘How Does the past Shape the Present?’, 212.

¹⁹⁹ Lintner, Bertil. ‘Opinion: Engagement with the Military?’. *The Irrawaddy*. 23 Aug. 2017.

in calling for greater freedom of speech. Criticizing the lack of press freedom in Burma, she argues that greater media literacy and improvements in the media infrastructure is much needed in order to reduce the legacy of censorship in the country.²⁰⁰ “Until and unless we can defend other people’s rights to practice their freedom of expression,” Ma Thida says, “we will have no freedom of expression.”²⁰¹ Similarly, Nay Phone Latt is another political activist in Burma who founded the Pangazar campaign to fight against online hate speech. The Pangazar coalition, meaning ‘flower speech’, was organized as a response to the spread of anti-Rohingya speech on social media websites.²⁰² Its founder Latt alongside Ma Thida have both been active in advocating for educating the public on how to use speech in a way that will aid the peace process.

For the international community, the challenge now is to craft engagement policies that will not only support Burma in the process of developing a stronger civil society, but also foster strong relations between the country and the outside world. This can be done in two ways. First, we must abandon our insistence on certain political conditions to be met as a requirement for engagement. While Burma’s political environment is still plagued with corruption and inequality, simply dismissing their transition process as illiberal or illegitimate will only alienate the political leadership, the pro-democratic forces, as well as the civilian population. Second, the new approach must also broaden the aims of diplomacy to encompass other goals such as socioeconomic development and political liberalization. Morten Pederson suggests for the West to normalize aid programs that will promote sustainable change. Since ethnic and religious tensions are fueled by a lack of access to

²⁰⁰ “Writers Must Take Lead in Burma Peace Process.” *PEN America*. 7 Nov. 2014.

²⁰¹ Kantar, Sally. “Ma Thida: ‘Fear Makes People Fierce’.” *The Irrawaddy*. 18 Oct. 2016.

²⁰² Oye, Mari Michener. “Using ‘Flower Speech’ and New Facebook Tools, Myanmar Fights Online Hate Speech.” *The Washington Post*, WP Company. 24 Dec. 2014.

health, education, and economic services, this gap in development capacity can be addressed if the international community is willing to shift their approach. This also will align with the work of Ma Thida and Nay Phone Latt toward improving the media education in the country. Lastly, Pederson stressed the need for realistic benchmarks for progress: “A broader, more *process-oriented* approach is both necessary to overcome military resistance to reform and prudent given the difficulty of instituting democratic governance.”²⁰³

In essence, transformative solutions require patience. This section has suggested various ways of improving our international engagement on the Rohingya crisis. A combination of strong legal framework, smarter sanctions, and cooperative diplomacy can be the right policy mix for a better way forward. Most importantly, critically engaging Burma does not mean giving in to humanitarian abuses and authoritarian politics. Rather, it is a willingness from Western human rights actors to first recognize the many political and historical complexities at play, and to take cooperative measures that will reorient Burma toward democratic change.

²⁰³ Pederson, ‘Promoting Human Rights in Burma’, 270.

CONCLUSION

The recent outbreak of violence in the Rakhine State culminated from decades of ethnic resentment. Even before the creation of a Burmese nation, the Rohingya Muslims and Rakhine Buddhists have struggled to live harmoniously with each other, with political and economic issues at the root of their hostility. Yet the broader human rights community has been unable to induce the country's political regime to take actions that can protect the Rohingyas against widespread violence. This aim of this thesis, therefore, was to provide an analysis of our inability to solve this crisis. By breaking down the three mechanisms of international engagement and their respective problems, I can now draw broader conclusions about ways for outside actors to better engage with authoritarian regimes.

First, there is tendency among human rights activists to use the naming and shaming tactic that fails to **acknowledge the sensitive nature of the crisis**. In the case of Burma, Western media that solely criticizes the Burmese regime and the wider Burmese population has only isolated many actors in the crisis. This thesis argued that the international community must improve on its rhetoric that frames the issue solely in a passive victimhood notion; furthermore, efforts must be made to recognize the entrenched poverty and politically oppressive situation that threatens both the Rohingyas and the Rakhines. Second, a debate on the use of economic tools such as sanctions, foreign aid, or economic loans has revealed that state actors must be aware of an incentive problem. Namely, the international community needs to **better understand the incentives** of Burma's societal elites, which are firmly ingrained in terms of national sovereignty, territorial integrity, and national unity. In addition, state actors need to reevaluate their own domestic politics to ensure that other geopolitical or economic interests do not eclipse human rights values. Lastly, international engagement must

pursue approaches that **respect the cultural differences regarding sovereignty norms**. Often times, many in the Western human rights community tend to punish those with values different from their own; the EU's conceptual discourse with ASEAN about state sovereignty is a prime example. Thus, Western human rights actors should respect the complex dynamic of Asian regional identity and make efforts to promote mutual perceptions between regions.

In recent years, the world has seen a reversal of international norms. With America First, Brexit, and the reactions to the Syrian refugee crisis, nationalist policies are taking a strong hold in foreign policy and with it, a decline in human rights values. Although America no longer leads the world in the cause for democratic promotion, other actors are rising in the international stage. Canadian Prime Minister Trudeau has highlighted human rights abuses in the Philippines, calling for President Rodrigo Duterte to curb the violence in his drug war. Similarly, other advocates in Britain, Sweden, and Switzerland have protected the status of Rohingyas refugees who have escaped to Bangladesh against the threat of refoulement. More importantly, not only are Western actors stepping up to help roll back authoritarianism, many developing countries in Asia have also adopted strong stands on various human rights issue. Namely, Indonesia has been the loudest voice in ASEAN, calling for Myanmar to take actions that promote democratic values. Other countries like South Korea have also pursued a stronger rule of law in their own domestic politics, signaling that there remain actors in Asia who are serious about promoting good governance. Thus, while recent examples of democratic backsliding may illustrate a decline of humanitarian values abroad, there can still be areas of optimism. The challenge now is for human rights advocates across all levels – state, IGOs, and the media – to work together to develop a coherent and transformative engagement policy.

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